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Circuit Court of Appeals

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For the Ninth Circuit.

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PACIFIC COAST COAL COMPANY, a corporation, et al. Claimants,

Appellants,

vs.

ALASKA STEAMSHIP COMPANY, a corporation, Owner of the American Steamship DENALI,

Appellee.

UNITED STATES OF AMERICA,

Appellant,

vs.

ALASKA STEAMSHIP COMPANY, a corporation, Owner of the American Steamship DENALI,

Appellee.

Apostles on Appeals

In Twelve Volumes

VOLUME V

Pages 1961 to 2464

FILED

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PAUL P. O'BRIEN,
CLERK

Upon Appeals from the District Court of the United States for the Western District of Washington, Northern Division.

United States
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(Testimony of Peter Albert Obert.)

Q. What did he say as to adjusting the compass, what he was going to do about it?

A. That was all he said.

Q. What was that?

A. That morning outside of Victoria, going out in the Straits, and I said, 'You didn't get the compass adjusted,' and he said, 'No, I didn't.' And that is the only conversation I had with him regarding the compass. I may have said she was a little off one way or the other.

Q. What do you mean by that?

A. I might have said to him something like this: 'I see she runs to the right a little,' or maybe 'That she runs to the left.' when I told him about the compass not being adjusted.

Q. When did you say that?

A. When we were off Race Rock."

Then a little further on, page 31:

"Q. Why did you say that she was running to the right or to the left?

A. I might have mentioned that. I don't remember. [1927] I may have said something, that she runs to the left or to the right. I don't remember. It was in that conversation when I said the compass had not been adjusted.

Q. Tell us just as you said it, how you remember having said it.

A. I said I might have said that.

(Testimony of Peter Albert Obert.)

Q. Is it your best recollection that you did say that?

A. I would not say. I will say that I might have said it. But I don't remember.

Q. There must have been something said, or else you would not have commented upon the fact that the compass was not adjusted.

A. A man doesn't remember what he says half of the time."

Mr. Long: In view of that I ask that the whole matter be stricken. The witness said that he didn't remember. Counsel was pounding at him, pounding at him, and pounding at him for hours here, and the Court should know the circumstances of this thing.

The Court: The Court has sufficient knowledge to rule as the Court feels the ruling should be made.

Mr. Long: I object on the ground of counsel's own statement. The witness says he doesn't remember, that he doesn't know anything about it.

The Court: Objection overruled.

Mr. Long: The testimony is put in his mouth by counsel.

Q. (By Mr. Ryan) ——(Continuing)——[1928]

"Q. Isn't it a fact that you must have observed something like that in this conversation or else you would not recall the statement that you made, 'I see you didn't have the compass adjusted,' Isn't that right?"

Mr. Long: Just a minute; you know very well that is not part of your question.

(Testimony of Peter Albert Obert.)

Mr. Ryan: Pardon me—just strike out those words.

Mr. Long: Counsel is deliberately trying to put a lot of things in here.

Mr. Ryan: I assure you there was nothing deliberate about that at all.

The Court: Strike the statement of Counsel Long and the statement of Counsel Ryan, the statement that Counsel Ryan deliberately inserted something in there.

Mr. Long: That is the reason, in anticipation of this very thing, that I made the objection to begin with, and Your Honor ruled in my favor.

The Court: The matter is being presented in accordance with the ruling of the Court. Proceed.

Mr. Long: Exception.

The Court: Exception allowed.

Q. (By Mr. Ryan—continuing) And a little later on:

“Q. You were on a ship you had never sailed on before,”——

Mr. Bogle: (Interposing) Where is this?

Mr. Ryan: Page 32.

Q. (Continuing):

“——and the compass had not been adjusted for at least a couple of years, and if the compass was [1929] running to the right or left,”——

Mr. Long: (Interposing) Just a minute; this is exactly the same thing.

(Testimony of Peter Albert Obert.)

Mr. Ryan: No, it is not. It is connected right up there with Capt. Healy.

The Court: If counsel cannot agree upon it the Court will hear it through, and if it does not turn out as counsel reading says it does, then it will have to be stricken.

Mr. Long: I understand, Your Honor, and I do not want to make these continuous objections, but after all I represent a client that has certain interests that I should protect, and, as I understand it, this line of questioning that counsel is reading in regard to this matter pertains to a conversation between this witness and Capt. Healy, an alleged conversation. Am I correct in that?

The Court: It refers to the compass or the compass adjustment.

Mr. Long: The conversation between the two gentlemen.

The Court: Well, whatever this witness said touching that matter, respecting the discussion had with Capt. Healy.

Mr. Long: The question counsel is about to read pertains to no discussion.

Q. (Continuing):

“Q. You were on a ship you had never served on before, and the compass had not been adjusted for at least a couple of years, and if the com- [1930] pass was running to the right or left, or something of that sort, so that you called the matter to the attention of the master

(Testimony of Peter Albert Obert.)

that the compass had not been adjusted, it would be a pretty serious thing?"

Mr. Long: May I make an objection?

Mr. Ryan: Wait a minute; this is connected up:

"A. It is not so very good, no.

Q. Why didn't you say that to Captain Healey before the ship left the dock, and not wait until she got off Victoria in Puget Sound?"

The Court: That part of it will be stricken, and the Court rules that you are not at liberty to introduce that in the case, the comments you are asking for. The opinion or reaction of this witness touching the mind or conduct of the Captain, is no part of this case.

Mr. Long: I think that should be stricken.

The Court: Yes; those matters relating to that subject.

Q. (By Mr. Ryan) Did you so testify or state, under oath, at the time and place, and under the circumstances, and in the presence of the persons I have stated to you?

Mr. Bogle: I take it, Your Honor, that question refers to everything that counsel has read.

The Court: Yes.

Mr. Bogle: It seems to me that is an unfair way to interrogate a witness. I cannot remember it all.

The Court: Objection overruled. If he can say whether he so stated, then he can answer the ques-

(Testimony of Peter Albert Obert.)

tion, and if he cannot so state he can answer that way, as to [1931] what he knows.

The Witness: I might have said something of it, but I do not remember all of it.

Q. Do you say you didn't say that?

A. I say I don't remember.

Q. Well, after you made that statement didn't Mr. B. F. Nelson type out a transcript from his stenographic notes and hand the original of that to you, in writing?

A. He came up to my house.

Q. Together with a copy of it?

A. He came up to my house.

Q. And asked you to make any changes or corrections you saw fit?

A. He did not.

Q. What did he say?

A. He came out to my house and wanted me to sign it, and that is all. I refused to. He says, "It will take some time before you read that through," and I said "I want to read it all." I refused to sign it. There was things there I don't remember ever saying, never mentioned.

Mr. Long: Go ahead and finish your answer.

The Witness: You were all talking at the same time, the way you had me up I guess I was not responsible for what I was saying all the time. I had just lost my license, and I didn't know what was up; I didn't know whether you were going to hang me or what it was.

(Testimony of Peter Albert Obert.)

Q. Did you when this typewritten transcript was given to you by Mr. Nelson make changes in it yourself, in the language that was there, in his presence? [1932]

A. I made no changes.

The Court: Call his attention to them.

Q. I call your attention, for instance, to one here, on page 7, which Mr. Nelson apparently initialed, where you made a change.

A. I made no changes.

Q. Do you swear that you made no changes in that typewritten transcript when Mr. Nelson showed it to you, and in his presence, is that right?

A. I certainly do.

Q. Did you read it through in his presence?

A. Not all of it.

Q. How much did you read through?

A. Oh, I don't know; about half of it, I guess.

Q. And you made certain corrections in the transcript, did you not?

A. I made no corrections at all.

Q. Did you say "These few words here are wrong", or "I wish to change them," is that right?

A. I don't see any.

Q. I just showed you one, for instance?

A. I didn't make that.

Q. You didn't ask him to strike out those words from the answer that you gave, as he had it recorded in his notes?

A. I asked him nothing.

(Testimony of Peter Albert Obert.)

The Court: Proceed.

The Witness: I simply refused to sign it.

Q. Did you state the substance of what I read to you at the time? And under the circumstances I have described?

A. I said nothing to Mr. Nelson. [1933]

Q. No; at the time, in the United States Attorney's office, under the circumstances?

A. I don't remember.

Q. And at the time described?

A. I don't remember.

Q. Did you state in substance what I read to you or not?

A. I don't remember.

Q. That is your only answer that you wish to make to that?

A. Yes.

Q. Do you say did not?

A. I say I don't remember.

Q. You will not say you did not, will you?—
What is your best recollection?

A. It is not at all.

Q. You have no recollection at all of it?

A. No.

Q. Well, you do have a recollection of being there and——

A. (Interposing) I certainly do, yes.

Q. And being asked questions, do you now?

A. Yes. You called me up and wanted me to come down, and I said I couldn't come down.

(Testimony of Peter Albert Obert.)

Q. I didn't call you up.

A. Mr. Pellegrini called me, and I told him I couldn't come down because I was doing a little work, dirty work, and he said "It is absolutely necessary that you come down, we will send a taxi for you." Well, I didn't know what was up, whether I was going to be hung or lose my license, or what it was, so I said "All right", and in a few minutes a taxi was out there.

Q. And then you came down to the office? [1934]

A. I came down to the office and you started after me.

Q. And before these persons you made certain statements, did you not, under oath, after being sworn by Gerald Shucklin, a Notary Public?

A. I don't remember.

The Court: I think that covers it now.

Mr. Ryan: Well, if the Court please, in view of the answer of the witness I would like to take this up in short questions and answers, so he can specify as to each one.

The Court: No. You can have the reporter read as much of your question as submitted as you wish, and ask him about it.

Mr. Ryan: Mr. Reporter, will you do that? Will you read the first question and answer that I read. And I ask you, Mr. Witness, whether or not you did make a statement under oath at that time and place, and before the persons described.

(Testimony of Peter Albert Obert.)

The Court: I think, however, the reporter cannot both read the questions and be stopped at the point where you would want to stop him.

Mr. Ryan: Just at the end of each question and answer.

The Court: The only thing is that it seems to me to be taking up so much time. The witness has already said that he doesn't remember having made some of those statements, or doesn't remember whether he did or not, he would not say that he did not make them. I do not see why that doesn't cover it, Mr. Ryan.

Mr. Summers: If the Court please, may I be heard? [1935]

The Court: Yes.

Mr. Summers: This witness may very well be able to state, in view of all the objections and all the arguments that were mixed up in this long question, that he doesn't remember it, but I am submitting this to the Court, that if counsel be permitted to read a short portion of that transcript and then ask the witness piecemeal if he did or did not so testify, that would be proper.

The Court: The question is taking up an inordinate amount of the time of the Court on this cross-examination about something which is calculated to go to the recollection of the witness, or to test his recollection, or possibly to impeach the witness. I wish you would try to pick out those most pertinent parts of it, and if you can confine yourself to that

(Testimony of Peter Albert Obert.)

method in doing that you can submit a few of them seriatim by dividing up the matter in parts. Try to do that as expeditiously as you can, without going over all the ground again.

Mr. Ryan: All right.

Q. (By Mr. Ryan) At that time, and under those circumstances, did you or did you not state as follows, in answer to the following question:

“Q. Captain, prior to the time that the ship sailed from Seattle, we have been informed that either Captain Healey or yourself requested the company to adjust or compensate the compasses.

A. I don't know about the request.

Q. They were not adjusted?

A. No. [1936]

Q. Did you discuss with Captain Healey that matter at that time?

A. I asked him about it.

Q. What did he tell when you said they had not been adjusted? Did he tell you they would be adjusted, or what?

A. No, he didn't say that either.”

Did you so make that statement?

A. No, sir.

Q. You did not?

A. I don't remember I ever did.

Q. Do you say you did not make the statement, or you don't remember?

A. I don't remember.

(Testimony of Peter Albert Obert.)

Q. Do you remember any part of the questions or answers that I have read to you?

A. Yes.

Q. All right.

A. I remember you asked me when we were off Victoria, and I said to Capt. Healy "You have got the old cards, the old deviation cards", and he says "Well, we got a new book here, we have got a deviation book."

Q. You never mentioned any new deviation book at any time when you were being asked about it at this time and place, did you?

A. Well, I wasn't asked about it.

Q. You don't think you were—all right—and you never mentioned any new deviation book on either of the occasions of which you testified before the Steamboat Inspectors, did you? That is, at either the investigation [1937] in May or June, 1935?

A. I wasn't asked by the Inspectors. The deviation book is always laid out. That is when I saw it; but as far as the adjustment of the compass, we never had any conversation.

Q. You never had a conversation with Capt. Healy about adjusting compasses?

A. No.

Q. Do you mean to say that?

A. Yes.

Q. Insofar as Mr. Nelson's notes, his stenographic notes are concerned, they are all false?

(Testimony of Peter Albert Obert.)

A. I don't know.

Q. Are they false or not?

A. I don't know.

Q. You just have no memory on it, is that it?

A. I don't know.

Q. At that time, and under those circumstances, did you or did you not state, under oath, before those persons, at that place, as follows:

“Q. What was the deviation on the compass, if you know?

A. Well, she averaged from 1½ to 2½ degrees. That is not quite a quarter of a point; that is on the course we were going, West Northwest. It may have been more to the North, or East or South.

Q. Did you or any of the other officers on the boat do anything at all to adjust or compensate the compass?

A. Not myself. The second mate and the third mate [1938] took bearings to find out what variation or deviation she did have.”

Did you so testify or state that, under oath?

A. Yes, sir; they always do.

Q. Yes, but the questions and answers I have read, you heard them, and you answered them as I read them, did you? Your answer is “Yes”, is it?

A. Yes.

Q. At that time and place, and under those circumstances were you asked the following questions,

(Testimony of Peter Albert Obert.)

and did you give the following answers, pages 5 and 6:

“Q. You had no conversation with Captain Healey regarding that?

A. In regard to the compass?

Q. Regarding the compass working badly before the ship left Seattle?

A. I don't remember. I might have said she should have been adjusted; that she had too much deviation; something like that.”

Did you make that statement or not?

A. I don't know anything about the ship before she left Seattle. I was not on board of her. I just got aboard the ship that night before she sailed.

Q. Did you make that statement or not, at that time and place, and before those persons?

A. No, sir.

Q. You did not make it? This one you remember; you did not make it, is that correct?—You deny it?

A. How could I?

Q. But you deny it, don't you? [1939]

A. Yes, I do.

Q. That particular one. Now, you read that part of the transcript over, and you supposedly made that statement, didn't you? That was on page 6 of your statement.

Did you read it over in Mr. Nelson's presence?

A. Not all of it.

(Testimony of Peter Albert Obert.)

Q. But didn't you read it as far as page 6?

A. I don't remember that.

Q. Pages 5 and 6?

A. I don't remember that.

Q. How far did you read through it?

A. Oh, about half of it, something like that.

Q. Well, the statement is fifty-seven pages long, so you read at least as far as pages 5 and 6, didn't you?

A. Maybe I did.

Q. Did you say to Mr. Nelson that any of those questions and answers were wrong?

A. I said nothing to Mr. Nelson, only I refused to sign it, that is all I said to him.

Q. You say you said nothing to Mr. Nelson, except that you refused to sign it, is that correct?

A. Yes, sir.

Q. You have a clear memory on that?

A. I certainly have.

The Court: Proceed.

Q. (By Mr. Ryan) At that time and place did you make this statement under oath, page 6:

“Q. Just what words did you use and what words did Captain Healey use in your discussion with him about the adjustment of the compasses before the [1940] ‘Denali’ sailed on this voyage?

A. We sailed in the night or early in the morning, and we were going out in the Straits,—I think it was some time before we

(Testimony of Peter Albert Obert.)

got out in the Cape, or around Flattery, I asked him if he was going to have the compass adjusted, and he said he didn't get it adjusted.

Q. Why did you say that?

A. Because I happened to notice in the chart room the old cards from 1933, and that the cards were old, and there should be some new cards,"——

Did you so state under oath at that time and place, to those persons?

A. I told them that.

Q. You did?

A. Yes.

Mr. Long: I request that counsel read to the Court the remainder of that same answer, that he deliberately hasn't read.

Mr. Ryan: That is the part I said was stricken out.

Mr. Long: Who struck it out? This witness said he didn't strike it out.

The Court: Objection overruled, and the request to the Court at this time, or to the witness, is denied.

Q. (By Mr. Ryan) At that time and place, and to those persons, did you make the following statement under oath, at page 7:

“Q. At the time the ‘Denali’ sailed from Seattle, you didn't know the deviation of the compass on the headings or courses? [1941]

A. I didn't know exactly how much she had.

(Testimony of Peter Albert Obert.)

Q. You didn't swing the ship to determine that, did you?

A. No."

Did you so state under oath?

A. I didn't swing the ship.

Q. Did you so state under oath as I have read the questions and answers, at that time and place, and to those persons?

A. I couldn't. I wasn't aboard before she left.

Q. Do you deny that you made those statements in answer to those questions?

A. I don't remember anything about it.

Q. So you do not deny it?

A. I don't remember it.

Q. At that time and place, and to those persons, did you make the following statement under oath, page 7:

"Q. And that, according to the usual practice, is done by the compass adjuster?

A. By Max Kuner"—

Mr. Long: (Interposing) Just a minute, that has nothing to do with any conversation; this is counsel's statement about who adjusts compasses in Seattle, and I submit it has nothing to do with a conversation with Capt. Healy.

Mr. Ryan: It is all a part of it, and the Court has already ruled.

The Court: You may lay the foundation, in order to avoid doubt about it. Lay the foundation for it.

(Testimony of Peter Albert Obert.)

Q. (By Mr. Ryan) You did not swing the ship to determine the deviations of the compasses on the "Denali", did you? [1942]

A. I did not.

Q. And that, according to the usual practice, is done by the shore compass adjuster, isn't it?

A. Yes, sir.

Mr. Long: I ask that counsel be required to read the next question.

Mr. Ryan: That is admitted, he has testified to the fact now. Why contradict him?

Mr. Long: I submit the Court should have the benefit of all of it, if he is going to read part of it.

The Court: Counsel can redirect on any matter that is not considered by counsel for the Claimants.

Mr. Long: I cannot keep up with him; he is all over the place here.

The Court: Proceed.

Q. (By Mr. Ryan) How often do you, as a master mariner, think compasses should be adjusted on a vessel that is laid up every winter, like the "Denali"?

Mr. Long: That is an improper question, Your Honor, on cross-examination. That was not gone into on direct examination at all.

Mr. Ryan: They examined this man about compasses and deviations, and all that sort of thing.

The Court: I do not recall what question was asked, but if you recall, Mr. Ryan—

Mr. Summers: (Interposing) Yes, Your Honor; with respect to the custom they asked

(Testimony of Peter Albert Obert.)

whether or not it was customary for a vessel to have deviation cards as old as two years, or 18 months, and they asked this man what was the universal custom with respect to the adjust- [1943] ment of compasses. They have gone into this question by this witness on direct examination.

Mr. Long: No mention was made of compass adjustment, and I submit the record will so indicate.

The Court: What is the question you seek to ask him now? Read the question. (Question read as follows:

“Q. How often do you, as a master mariner, think compasses should be adjusted on a vessel that is laid up every winter, like the ‘Denali’?”)

Mr. Long: I object to that as improper cross-examination, Your Honor.

The Court: Objection overruled.

Mr. Long: Exception.

The Court: Exception allowed.

Mr. Ryan: Will you answer the question?

Mr. Long: Read the question to the Captain.

Mr. Ryan: The witness has not said he doesn't understand it.

The Court: Do you remember the question?

The Witness: How often it should be? Well, I should say every year, or oftener. if it is necessary, if the master finds anything wrong with it, anything unusual, he should have them adjusted every year. [1944]

(Testimony of Peter Albert Obert.)

Q. Has it or has it not been the custom in Seattle for compasses on a vessel that is laid up every winter like the "Denali" to have them adjusted in the spring?

Mr. Long: That is the same objection, Your Honor. There is no testimony about custom here.

The Court: Objection overruled.

Mr. Long: Exception.

The Court: Exception allowed.

A. I don't know anything about the customs unless we find something wrong—something unusually wrong with them.

Q. (By Mr. Ryan) At the time and place, and to the persons that I have described, in the United States Attorney's office on that occasion did you or did you not state under oath as follows:

"Q. How often do you as a master mariner think compasses should be adjusted on a vessel that is laid up every winter like the 'Denali'?"

A. Well, the custom is to have the compasses adjusted in the spring.

Q. That has always been the practice in the Seattle Harbor?

A. That is the custom".

Did you or did you not so state under oath?

A. Maybe I did.

Q. Your best recollection is that you did, is it?

A. Yes. If there is anything wrong with them—anything unusually wrong.

(Testimony of Peter Albert Obert.)

Q. Yes. But you didn't say anything about anything being wrong in that answer at that time, did you?

A. Well, I should have said it.

Mr. Long: Did you have an opportunity to state it, Captain? [1945]

The Court: Well, you can redirect him on that and connect it up more closely if you think it is necessary.

Q. (By Mr. Ryan) At the time and place and to the persons I have described, in the United States Attorney's office in Seattle, did you or did you not—were you asked the following question and did you make the following answer:

“Q. Your own opinion is that the compass on the ‘Denali’ should have been——”

Mr. Bogle: (Interposing) What page?

Mr. Ryan: At page 11.

Q. (By Mr. Ryan)

“Q. Your own opinion is that the compass on the ‘Denali’ should have been adjusted before she went on this last voyage?

A. Yes, it should have been. Yes.”

Did you so state under oath?

A. I don't remember that.

Q. Do you deny that you did state that under oath at that time?

A. I say that I don't remember.

Q. Your only answer is that you don't remember, is that right?

(Testimony of Peter Albert Obert.)

A. Yes, sir.

Q. Now, at that time and place, to those persons in the United States Attorney's office in Seattle did you—were you asked the following questions and did you give the following answers under oath.

Mr. Bogle: What page?

Mr. Ryan: Pages 14 and 15.

Q. (By Mr. Ryan)

“Q. You were steering northwest?

A. North, directly, for fifteen minutes from the north end of [1946] Vancouver Island.

Q. Are you sure there is an entry in the compass book of an azimuth taken by you when you were steering those few minutes?

A. Not by me.

Q. How do you know it was taken by anybody?

A. Because we always do when we have a chance.

Q. As a matter of fact, you don't know whether any azimuth was taken?

A. I know there was one taken.

Q. On this voyage?

A. Because I asked the captain to get one.

Q. When?

A. When I got off watch I asked the captain to take one.

Q. You asked the captain to take an azimuth?

A. Yes.

(Testimony of Peter Albert Obert.)

Q. What day was that?

A. On the 17th.

Q. Then you think that he took one and put it in the compass book?

A. I think the second mate took it for him. He was a good navigator”.

Did you or did you not so state under oath?

A. Yes, I did. I didn't ask the captain. I asked the second officer, which he did.

Q. But at that time you stated under oath that you asked the captain to take an azimuth and you asked him that on the 17th, didn't you?

A. On the 17th, yes.

Q. Yes. Now——

A. (Interposing) Not the captain.

Q. (By Mr. Ryan) Now——

The Court: (Interposing) Pardon me. He wants to say something else. What is that that you want to say, Captain?

The Witness: I didn't ask the captain. I asked the second officer.

The Court: The point is whether or not you stated [1947] as he read on the occasion in question.

Q. (By Mr. Ryan) On the occasion in question did you say that you stated under oath that you asked the captain to take an azimuth?

A. If I did, I didn't mean to. The second officer did.

Q. Is your recollection as good now as it was at the time that you made this statement under oath?

(Testimony of Peter Albert Obert.)

A. I think so.

Q. You think it is?

A. Yes, sir.

Q. You don't think that your recollection was better at that time than it is now?

A. I don't think so.

Q. That was a long while ago, wasn't it?

A. Oh, not so very long ago.

Q. Who was the navigating officer of the "Denali"?

A. The second officer.

Q. Was the navigating officer on the bridge while you were on watch between midnight and 6:00

A. M. on May 18, 1935?

A. The captain was on the 6:00 to 12:00 watch.

Q. Was he there after midnight? That is, was he on there during your watch at any time from midnight to 6:00 A. M. on May 18th?

A. No.

Q. You shake your head. Do you mean to say no?

A. I say, "No."

Q. You are positive about that?

A. Yes, sir.

Q. Was he in the chart room during your watch at any time between midnight and 6:00 A. M. on the 18th of May, 1935? [1948]

A. He may have been. Lots of times he comes in on somebody else's watch.

(Testimony of Peter Albert Obert.)

Q. But this night, do you recall his being there this night—that is the night that the ship stranded? You recall that night quite well?

A. Yes.

Q. Now, was he there during your watch on this night that the ship stranded?

A. Not that night.

Q. Where were you on that night, from shortly after midnight on May 18th to 6:00 A. M. on May 19th?

A. I was on watch.

Q. Were you in the chart room?

A. I must have been, or in the pilot house.

Q. Did you see the second officer there after midnight?

A. Not at that time.

Q. At the time and place and in the presence of these persons that I have described, in the United States Attorney's office in Seattle, did you state under oath as follows:—

Mr. Bogle: (Interposing) What page?

Mr. Ryan: Page 16.

Q. (By Mr. Ryan)

“Q. How did you know what the deviation was on the north course?

A. I just told you that. That two and a half degrees was found.”

Did you or did you not so state under oath?

A. No, I don't remember making such a statement.

Q. Do you deny that you made that statement?

(Testimony of Peter Albert Obert.)

A. I don't remember.

Q. You don't deny it?

A. No, I don't remember ever making such a statement. [1949]

Q. Did you further state under oath at that time and place, and to those persons in the United States Attorney's office in Seattle, as follows:

“Q. Just with one azimuth taken, without any other bearing being taken, would you think that a mariner would be justified in relying on that definitely showing the deviation on that heading?

A. Just one?

Q. Yes.

A. I would not rely on it”.

Mr. Bogle: Where is that?

Q. (By Mr. Ryan) Did you or did you not so state under oath?

Mr. Bogle: What page is that?

Mr. Ryan: 18 and 19.

A. I don't remember that.

Q. (By Mr. Ryan) Do you deny that you made that statement under oath?

A. I say I don't remember that.

Q. You don't deny that you made that statement, do you?

A. I say I don't remember making any such statement.

Q. But you don't deny it?

A. I don't remember.

(Testimony of Peter Albert Obert.)

Mr. Long: Your Honor, we are going far afield of Your Honor's ruling. May it be understood that we may read all the rest of this into the record on this one thing?

The Court: The understanding is that if there is one verb or noun or pronoun, or period or comma or answer that you wish to call the witness' attention to, indicating a more complete answer, the Court will give you the opportunity to call the witness' attention [1950] to that.

Mr. Long: Then do I understand that we will have an opportunity to read such parts of this record into the record as we may want to read?

The Court: Well, it all depends whether it is pertinent or not.

Q. (By Mr. Ryan) At that time and place, in the United States Attorney's office in Seattle, as I have described, did you not make the following statement under oath——

Mr. Long: What page?

Mr. Ryan: Pages 19 and 20.

Q.

“Q. You used two charts or just one?

A. We always compare them.

Q. Which chart would you use?

A. Both of them.

Q. What was the number of the Canadian chart?”

I may say, if Your Honor please, that there was a Canadian chart and an American chart mentioned earlier in an earlier question.

(Testimony of Peter Albert Obert.)

The Court: Yes, and also referred to on the direct examination.

Mr. Ryan: Yes.

The Court: There was some chart referred to on the direct examination.

Mr. Long: Yes, there was a chart referred to, but it was not a Canadian chart.

Mr. Ryan: You referred to two charts.

Mr. Long: Yes, and they were both American charts.

Mr. Ryan: We will show you what you were referring to.

Mr. Long: To that I have no objection. [1951]

Mr. Ryan: We will refer you to the charts that you actually have.

Q. (By Mr. Ryan)

“Q. You used two charts or just one?

A. We always compare them.

Q. Which chart would you use?

A. Both of them.

Q. What was the number of the Canadian chart?

A. I don't remember the number.

Q. What was the number of the United States chart?

A. I am not sure. I think it was 8920.

Q. What was the title or name of the United States chart?

A. Part of Dixon's Entrance and Brown Passage.

(Testimony of Peter Albert Obert.)

Q. What was the title of the Canadian chart?

A. Same thing. Entrance to Dixon, or Dixon Entrance and Brown Passage.

Q. The United States chart that you used on that particular voyage, when was that chart bought and put on the ship?

A. She had a brand new set of charts on this voyage.

Q. Did you buy them?

A. They were ordered from the office and the second mate brought them onto the ship. She had some old charts, and brand new charts, and harbor charts as well.

Q. You think the charts of part of Dixon Entrance and Brown Passage were new charts, or, rather that that chart was a new chart, and that that chart has been saved, and that the company has it?

A. I think so."

The Court: Now connect it up and ask him——

Mr. Ryan: (Interposing) All right.

Q. (By Mr. Ryan) Did you or did you not so state under oath?

A. Yes, sir.

Q. Did you or did you not state under oath at that time and place, and to those persons in the United States Attorney's [1952] office in Seattle,

“Q. How about the Canadian Government chart?

(Testimony of Peter Albert Obert.)

A. I don't think they have that.

Q. Do you know when it was bought?

A. It must have been a couple of days before the ship sailed.

Q. You don't know that?

A. No."

Did you or did you not so state under oath?

A. I don't remember saying that about the Canadian chart.

Q. Do you deny that you so stated that under oath?

A. Of course she had Canadian charts as well as American charts.

Q. Well, did you so state under oath as I have read it?

(Witness does not answer)

Q. Do you deny it, or do you just don't remember it?

A. I don't remember it. The ship, she had a set of charts from San Diego to Bering Sea—a small scale and large scale, besides any amount of harbor charts.

Q. Well, there is a well known chart on small scale published, 8102, is there not?

A. Yes, sir.

Q. And that is the one——

A. (Interposing) That is a large scale.

Q. Well, if you want to call it a large scale, all right. This is the one that the purser saved, and it is here from the "Denali", isn't it (indicating)?

(Testimony of Peter Albert Obert.)

Mr. Long: I suggest that you should let him see it, counsel.

The Court: Yes, let him see it. It is the one that was creased or folded in the middle, is it?

Mr. Ryan: Yes.

The Court: And that is the one that counsel now [1953] has in his hands?

Mr. Ryan: Yes.

Q. (By Mr. Ryan) This is a chart of that area, is it not, 8102 (showing chart to witness)?

A. Yes. That is a chart.

Q. Was that chart on board the "Denali" when she sailed on that voyage?

A. Yes, sir; absolutely.

Q. And what is this rubber stamp down here—what does that rubber stamp down here mean, down here at the bottom?

A. April 15, 1935.

Q. What does that stamp mean?

A. Well, that is when it was issued.

Q. Yes.

A. They are all alike. There is no difference. The triangulation is the same on all of them, and the soundings and the contour of the land.

Q. Now, in view of the fact that your recollection has been refreshed here by some statements that you made, and that you admit that you made on previous occasions—

Mr. Long: If Your Honor please, I object to that. Let counsel ask him questions.

(Testimony of Peter Albert Obert.)

Mr. Ryan: I will strike that.

Mr. Long: Ask him questions, if you want to ask him anything.

The Court: That is withdrawn.

Mr. Ryan: Strike that out. I will withdraw that. Is your Honor going to adjourn right now? I will bring this thing to a close in just a few minutes.

[1954]

The Court: Well, very likely you are just about finished with the cross, and maybe we can go ahead with something else tomorrow.

Mr. Ryan: Oh, this is only just cross examining him on previous inconsistent statements, Your Honor. I have considerable cross examination yet of this man. He is the officer on watch at the time of the stranding.

The Court: Well, the Court is adjourned until ten o'clock tomorrow in the forenoon.

(Whereupon an adjournment was taken at 4:30 o'clock P. M., November 3, 1937, to 10:00 o'clock A. M., November 4, 1937.) [1955]

November 4, 1937,
10:00 o'clock A. M.

Court convened pursuant to adjournment;

All parties present.

The Court: Any ex parte matters? If not, we will proceed with the trial. As I understand it, counsel for the claimants wish to insert two extra pages in their trial brief.

(Testimony of Peter Albert Obert.)

Mr. Summers: That is right, Your Honor.

The Court: I have those before me and that will be done. You may proceed with the case on trial. Captain Obert is on the stand. Come forward, Captain, and resume the stand.

PETER ALBERT OBERT,

resumed the stand for further examination.

Mr. Bogle: If Your Honor please, in view of what transpired yesterday, on behalf of the petitioner at this time I make a demand that they produce, in connection with the examination of this witness, the statement which Mr. Pellegrini stated in open court yesterday he took from this witness on an occasion prior to the one referred to by Mr. Ryan. I think that we are entitled to the other statement as well as this for the purpose of examination.

Mr. Ryan: Mr. Pellegrini doesn't happen to be here, but I have never seen any such statement.

The Court: That is not clear in my mind, Mr. Bogle, as to what you refer to. [1956]

Mr. Bogle: Mr. Pellegrini in stating to Your Honor the circumstances under which Captain Obert was called to the United States Attorney's Office yesterday, stated that he had previous to that occasion called Captain Obert into his office and had taken a statement. Then he had a request to make a further investigation, and on that occasion he called him in again and at that time he took the

(Testimony of Peter Albert Obert.)

statement that Mr. Ryan referred to yesterday. I think he has taken two statements from the witness, and we are entitled to have the first statement before us in connection with this examination. If Mr. Pellegrini is not here, I am willing to defer that request and demand until he is here.

The Court: Very well.

Mr. Ryan: I am quite sure that Mr. Pellegrini didn't say that he took any statement the first time. If he did, I have never seen it, and I don't believe that there is one.

The Court: The Court will not undertake to dispose of something that is not before the Court.

Mr. Bogle: I might say that Mr. Pellegrini's statement to that effect appears on pages 1402 and 1403 of the record.

Mr. Ryan: May I look at it?

(Mr. Bogle shows transcript to Mr. Ryan.)

Mr. Bogle: Didn't he make that statement?

Mr. Ryan: So far as I know he never took anything in writing or anything of that sort at all.

The Court: The Court will consider it upon further [1957] request when Mr. Pellegrini is present.

Mr. Bogle: Yes, Your Honor. That is all right.

The Court: You may proceed. Before proceeding with your examination, in connection with this addition to claimants' brief, I would like to say to all counsel that the Court would welcome any further authorities which you may have on the subject. There was a case of somebody against Romaine

(Testimony of Peter Albert Obert.)

that was cited by counsel for the claimants. It was a case appealed from Judge Neterer, and the Circuit Court of Appeals wrote the opinion—the opinion in that case was written by Judge Gilbert. Mr. Summers I think has called attention to it in connection with—he and Mr. Ryan presented that as an authority for the subject then in hand. Any further authorities which counsel—all counsel—any counsel can give the Court on that subject will be welcomed by the Court.

Now you may proceed, Mr. Ryan.

Further Cross Examination

By Mr. Ryan:

Q. On proceeding from the fix off Triple Island Light on the course North $\frac{3}{4}$ West, as you have laid it out on Petitioner's Exhibit 33, Chart 2828, what would happen if you had westerly deviation on your compass?

A. I had no westerly deviation.

The Court: Read the question.

(Question read)

The Court: Now that question assumes—it is conditioned that you did have such a deviation, and [1958] that being so what would be the effect?

The Witness: I would be running her ashore.

Q. (By Mr. Ryan) On this reef where the——

A. (Interposing) No, sir. I would be running her ashore on Prince Lebo Island.

(Testimony of Peter Albert Obert.)

Q. The effect of westerly deviation is to throw the ship's head to the west, or left, is it not?

A. No.

Q. Your answer is "Yes"?

A. To the right.

Q. The effect of the westerly deviation is to throw the ship's head to the left, is it not?

A. Into the shore. I was not figuring so much on deviation. I was figuring on the current.

Q. Wait a minute. Isn't the effect of westerly deviation to throw your ship's head to the left—ship's bow?

A. To the right.

Q. Are you sure about that?

(Witness does not answer.)

Q. Well, what happens to the course that you are trying to make good if you have westerly deviation?

A. On the course that I was trying to make good——

The Court: (Interposing) Just answer this question; not what you were trying to do then and there, on that occasion when you were navigating this vessel, but this question has a condition in it. Read it, Mr. Reporter.

(Question read as follows:

“Well, what happens to the course that you are trying to make good if you have westerly deviation?”) [1959]

(Testimony of Peter Albert Obert.)

A. She is setting to the right.

Q. (By Mr. Ryan) It would throw you off your course at any rate, wouldn't it?

A. Yes, sir; if she had any.

Q. If she had any?

A. Yes, sir.

Q. In the United States Attorney's office on August 2, 1935, before Assistant United States Attorney Pellegrini and the other witnesses that I have described to you on that occasion—you recall generally the circumstances, do you not, Captain?

The Court: Which was stated to you yesterday.

Q. (By Mr. Ryan, continuing) Which was stated to you yesterday. Did you or did you not state under oath as follows—

Mr. Bogle: (Interposing) What page?

Mr. Ryan: At pages 27 and 28.

Q. (By Mr. Ryan):

“Q. The deviation that would throw your ship farther westward than you contemplated would be what kind of a deviation, westerly or easterly?

A. Westerly.

Q. If there were greater westerly deviation of your compass than you expected or knew about, then that would account for your being thrown farther on this reef, wouldn't it?

A. If it was more than I knew about, yes”.

The Court: Now, ask the question. [1960]

Q. (By Mr. Ryan) Did you or did you not so state under oath?

(Testimony of Peter Albert Obert.)

A. I cannot say yes or no to that because I don't remember.

Q. Do you deny that you stated it?

A. I cannot say yes or no, because I don't remember making such a statement.

Q. Is that answer as I have read it to you true or false according to the facts?

A. I cannot answer yes or no. I cannot remember.

Q. What?

A. I cannot remember.

Q. Well, I am not asking you now to remember. I am asking you the straight question. "The deviation that would throw your ship farther westward than you contemplated would be what kind of a deviation, westerly or easterly"?

The Court: And his answer then was what?

Q. (By Mr. Ryan) His answer then was "Westerly". Now, what is your answer now.

A. No.

Q. You say that—the westerly deviation would throw your ship's head to the right, is that right?

A. Yes, sir.

Q. "Q. Now, if there were greater westerly deviation of your compass than you expected or knew about, then that would account for your being thrown farther on this reef, wouldn't it?" And your answer then was, "If it was more than I knew about, yes".

Now, what is your answer now? [1961]

(Testimony of Peter Albert Obert.)

A. I knew what it was.

Q. What is your answer now to that question?

A. Well, I cannot say yes or no to that question because I don't remember what I did say. You had me so befuddled up there that I don't remember what I did say.

The Court: Now, let the reporter read the interrogation involved at this point.

(Question read as follows:

“ ‘Now, if there were greater westerly deviation of your compass than you expected or knew about, then that would account for your being thrown farther on this reef, wouldn't it?’ And your answer then was, ‘If it was more than I knew about, yes.’ Now, what is your answer now?’”)

A. I don't remember.

The Court: Well, what is your answer now to the question, the question being again put to you at this time. What is your answer?

A. Well, I don't remember.

The Court: Read that question again. That question part and not the answer.

(Question read as follows:

“ ‘Q. Now, if there were greater westerly deviation of your compass than you expected or knew about, then that would account for your being thrown farther on this reef, wouldn't it?’ Now, what is your answer now?’”)

(Testimony of Peter Albert Obert.)

A. No, sir.

Q. Why not?

A. Because it would throw me to the right, wouldn't it?

The Court: He is asking you; you are not asking him. [1962]

Q. (By Mr. Ryan) I am asking you. You say——

A. (Interposing) It would throw me to the right farther.

Q. Then if you had deviation on the compass of the "Denali" it would throw your ship's head to the left or westward?

A. But I didn't have——

Q. (Interposing) Wait a minute until I finish the question.

A. All right.

Q. I will ask you again, so that you will get it clearly. If you had deviation on the compass of the "Denali" such as to throw your ship's bow or head to westward, or the left, then if you were steering a course from this fix off Triple Island North $\frac{3}{4}$ West you would actually be making a course over the ground towards this reef on which the "Denali" stranded, isn't that so?

A. No, sir.

Q. Why not?

A. It would put me over on the starboard shore instead of over the reef.

(Testimony of Peter Albert Obert.)

Q. I am not asking you about easterly deviation or westerly deviation. I am asking you about the kind of deviation that would throw your ship's head to the westward or left.

A. It would throw me to my right if I had any.

Q. Suppose your ship's head would be thrown to your left when you are steering, do you mean to say that you would go to the right?

A. Sure.

Q. All right. Well, suppose you had such an error in your [1963] compass but when steering a course North $\frac{3}{4}$ West you were actually going over the ground to the westward of that course, you would go on this reef, wouldn't you?

A. No, sir, I wouldn't go on the reef.

Q. Why not?

A. Because I would hit the starboard shore before I would come to the reef—before I got there.

Q. Now, Captain, you laid down—do you understand the question—I am asking you to assume that you have such an error of your compass so that you are being thrown to the westward.

A. But I had no error on the compass.

Q. I am asking you to assume that you had. If you did have that then you would—instead of going North $\frac{3}{4}$ West over the ground, or North by West $\frac{1}{8}$ West over the ground, you would be going right toward that reef, wouldn't you?

A. If I was steering North by West $\frac{1}{8}$ West I might have been over there, yes, sir.

(Testimony of Peter Albert Obert.)

Q. All right. If you were steering a course North by West $\frac{1}{8}$ West from this fix off Triple Island—

A. (Interposing) Yes.

Q. (Continuing) —and if you had three-eighths of a point deviation—westerly deviation—wouldn't the "Denali" have headed right for that reef where she did strand?

A. I would have been outside of the island.

Q. On which side of the island?

A. On the outside of it—on the ocean side.

Q. You mean you would have been to the west of Zayas Island? [1964]

A. Yes, sir.

Q. You say that a westerly deviation of three-eighths of a point on this course North by West $\frac{1}{8}$ West would be sufficient to throw you clear over to the west of Zayas Island, is that it?

A. Deviation or no deviation, if I had steered North by West $\frac{1}{8}$ West I would have been outside of the island—to the west of it on that night.

Q. Well, now, assuming for the purpose of argument that there is no current—that there is no tidal current at all. Just assume that. Assume that there is no tidal current setting you to the westward at all. Under those circumstances if you steered a course North by West $\frac{1}{8}$ West from this fix off Triple Island, and if you had three-eighths of a point westerly deviation, the "Denali" would have run on that reef just as she did on that night, wouldn't she?

(Testimony of Peter Albert Obert.)

A. No. She would have been on the starboard shore or over on the island.

Q. Well, if she had easterly deviation of three-eighths of a point she would have gone right on the reef, the way that you have described, wouldn't she, on this night, isn't that right?

A. I was not allowing for any deviation. I was allowing for the current.

Mr. Ryan: Read the question.

The Witness: That is why I steered three-quarters.

Mr. Ryan: Read the question. That is not an answer, Captain. I will have it re-read to you.

(Question read as follows:

“Well, assuming for [1965] the purpose of argument that there is no current—that there is no tidal current at all. Just assume that. Assume that there is no tidal current setting you to the westward at all. Under those circumstances if you steered a course North by West $\frac{1}{8}$ West from this fix off Triple Island, and if you had three-eighths of a point westerly deviation, the ‘Denali’ would have run on that reef just as she did on that night, wouldn't she?”)

A. No, sir.

Q. Why not?

A. Because she would be over on the starboard shore.

Q. Well, this time I asked you if she had easterly deviation instead of westerly, and you say that your answer would be just the same, do you?

(Testimony of Peter Albert Obert.)

A. One degree westerly deviation she had on that track, which is nothing on a short course.

Q. Do you understand the question?

A. I understand it perfectly.

Q. You understand it? I am asking you now about easterly deviation of three-eighths of a point.

A. I was not allowing easterly deviation.

Q. Do you understand that I am asking you to assume that there was easterly deviation?

A. I am not assuming anything.

Q. What is compass deviation?

A. To get deviation from the compass—from the sun—take a bearing.

Q. What is it?

A. Taking an azimuth. [1966]

Q. What does it mean; not how you make it, but what is it when you have gotten it?

A. You apply it to the compass if you have any deviation.

Q. But when you have it what is the effect on the compass that they call deviation?

A. You must allow it in the compass and in the steering, must you not?

Q. Well, don't you know what deviation of a compass is?

A. You allow it easterly to the left and westerly to the right.

Q. Why do you make that allowance?

A. In order to make the track good.

(Testimony of Peter Albert Obert.)

Q. Because the compass has a tendency to set away from the Magnetic North Pole, isn't that right?

A. Surely.

Q. Is that right?

A. Surely.

Q. What is your compass error—your total compass error as it is called?

A. What is it?

Q. Yes.

A. Deviation? What was it on this occasion—

Q. (Interposing) No, no. What is the compass error?

A. Well, it is the deviation that you have on the compass, isn't it?

Q. I see. Well, what is variation?

A. Well, I am not talking about that at all now.

Q. What?

A. Well, I am not talking about that now.

Q. Well, what is variation? [1967]

A. I don't know.

Q. You don't know what variation is?

A. That is what you allow when you correct a compass. That is variation.

Q. You don't know what it is, however?

A. I say that is what you allow when you correct a compass.

Q. Variation is?

A. Yes, sir.

Q. What allowance do you make for variation?

(Testimony of Peter Albert Obert.)

A. Whatever you have.

Q. How do you know what you have?

A. I didn't allow anything. I didn't take any bearings. The second mate and the third officer were taking the bearings—the second officer and the third officer were taking the bearings. [1968]

Q. How do you find out what the variation is?

A. By using the azimuth mirror. You have the variation on the chart.

Q. Oh, you have it on the chart?

A. Every chart has it.

Q. Every chart has the variation—all right; what was the variation at the place where the "Denali" was?

A. I don't remember what that was.

Q. What is the westerly deviation?

A. That is what you get, you get easterly or westerly; sometimes you get easterly and sometimes you get westerly.

Q. What is the westerly deviation?

A. That is when the ship has so much variation—runs her to the left or right.

Q. Runs how, when you have a westerly deviation?

A. You allow to the right.

Q. Doesn't it depend on what you have to start with? For instance, suppose you lay out a track on the chart and that gives you your magnetic course, doesn't it?

A. Certainly.

(Testimony of Peter Albert Obert.)

Q. That is your magnetic course. Now, the angle between that and the course your compass is steering is your deviation, isn't it?

A. Certainly.

Q. Suppose you have this magnetic course, you have laid the pencil line down on the chart, and there it is, your magnetic course, and now you want to find out—say you have four degrees westerly deviation?

A. No, sir.

Q. But suppose you had; assume you had, how do you know [1969] what compass course to steer in order to make good that magnetic course of, say, North $\frac{3}{4}$ West?

A. Well, the compass course, you apply it the other way.

Q. What course would you steer by compass if you knew you had four degrees westerly deviation, and you wanted to make good a magnetic course of North $\frac{3}{4}$ West?

A. About North $\frac{7}{8}$ West.

Q. North what?

A. North $\frac{7}{8}$ West.

Q. You would steer North $\frac{7}{8}$ West, you are sure about that?

A. Yes, sir.

Q. If you had four degrees easterly deviation on your compass, and you laid down a course on the chart of North $\frac{3}{4}$ West magnetic, what course would you steer in order to make good that magnetic course of North $\frac{3}{4}$ West?

(Testimony of Peter Albert Obert.)

A. North by West $\frac{1}{8}$ West.

Q. North by West $\frac{1}{8}$ West?

A. Yes.

Q. Well, that is the magnetic course the Captain laid down on this chart from Triple Island up through Caamano Passage, isn't it, North by West $\frac{1}{8}$ West?

A. Yes, sir. I don't know whether the Captain did—the second officer or the Captain.

Q. Anyway, you saw it on the chart?

A. Yes.

Q. North by West $\frac{1}{8}$ West?

A. Yes, sir.

Q. And that is the magnetic course you wanted to make good? [1970]

A. Yes, sir.

Q. What deviation, if any, did you allow in setting your compass course in order to make good that magnetic course, North by West $\frac{1}{8}$ West.

A. North $\frac{3}{4}$ West.

Q. Did that include any allowance for deviation of the compass at all?

A. Just about one degree.

Q. Well, that is the first time you have mentioned any allowance for deviation at all?

A. I mentioned that before.

Q. You did?

A. Yes.

Q. What kind of deviation was that?

A. Westerly.

Q. That was westerly deviation, wasn't it?

(Testimony of Peter Albert Obert.)

A. Yes.

Q. Exactly. Now, if you are wrong in your assumption that a westerly deviation throws your ship's bow to the right instead of the left, then if your westerly deviation was $\frac{3}{8}$ of a point and you were trying to make good that course North by West $\frac{1}{8}$ West, you would run right on that reef where the "Denali" stranded, wouldn't you?

A. No, sir.

Q. Why not?

A. One degree is nothing on a short course like that, don't amount to anything. If you run several hundred miles it is a different thing, or a hundred miles.

Q. You would have to run several hundred miles before a deviation of one degree would make any substantial [1971] difference, is that what you want to testify?

A. In 60 miles, one degree, you only get a mile.

Q. Only a mile?

A. That is all.

Q. Well, you cannot afford to be taking chances on miles either one way or the other when you are steering a course through a narrow passage, can you, Pilot?

Mr. Long: I object to that as purely argumentative, and ask that counsel's remark be stricken.

The Court: Objection overruled.

Mr. Long: Exception.

The Court: Request denied; exception allowed.

(Testimony of Peter Albert Obert.)

Q. (By Mr. Ryan) Did you understand the question?

The Court: I think he answered it.

Mr. Long: I didn't hear the answer.

The Court: Read the question. (Last question read.)

Mr. Long: I make the same objection.

The Court: That objection as applying to a narrow passage is sustained, because the witness just said that in short distances one degree deviation didn't make any difference. He said it might make as much as a mile difference if the distance covered on a certain course was 55 or 60 miles, so that the matter of miles is not involved in a short passage, which he seems to claim that this was.

Q. (By Mr. Ryan) What is the distance from this fix off Triple Island, where the "Denali" was, as you have laid it down on this chart, Petitioner's Exhibit 33, to the reef on which she stranded?

A. I don't remember exactly. About 22 miles, I think. [1972] I am not quite positive.

Q. And a deviation of one degree westerly would have not much effect in the course of 22 miles in setting your ship at right angles to the west of your course?

A. Well, it would be only about a third of a degree.

The Witness: Yes; which is nothing.

(Testimony of Peter Albert Obert.)

Q. I ask you to assume one degree. Does one degree westerly deviation, what effect does one degree westerly deviation have on a ship which is steering a distance of 22 miles, so far as throwing her at right angles to her course is concerned?

A. It would be nothing.

Q. Nothing at all?

A. No.

The Court: I think you should inquire about some other subject.

Q. Suppose it is two degrees?

A. Well, I wasn't steering by the compass very much; I was piloting. I was trying to pick up the land, direct myself by the land.

Q. And you were making no allowance for deviation whatever, is that right?

A. One degree, as I said.

Q. You said that for the first time today, didn't you, Captain?

A. I have said that a good many times.

Q. As far as this trial is concerned.

A. I have said it a good many times to you.

Q. On August 2, 1935, in the United States Attorney's [1973] office here in Seattle, under the circumstances and before the persons I described to you in full yesterday, did you or did you not state as follows, under oath——

Mr. Long: What page?

Mr. Ryan: Page 5.

Q. (By Mr. Ryan) You answer that you did yesterday, you testified here under oath as follows,

(Testimony of Peter Albert Obert.)

you testified that you stated—well, strike that out.

Mr. Ryan: Your Honor, I did not realize he had already admitted that yesterday.

Mr. Long: Let us know what you are referring to.

Mr. Ryan: I am not referring to anything right now.

Mr. Bogle: Then I move that the remark be stricken.

Mr. Ryan: I asked that it be stricken.

Mr. Bogle: I mean your last remark.

The Court: It will be stricken, all of it, with reference to this last matter.

Q. (By Mr. Ryan) Did you or did you not testify before the United States Steamboat Inspectors at the investigation in May, 1935, as follows:

“Q. Did you find the vessel making her courses regularly?

A. Yes, sir. We had to allow for deviation a little, from one to one and a half degrees. You allow accordingly.”

Did you so testify?

A. Yes, I guess I did.

Mr. Long: What is the page, Mr. Ryan?

Mr. Ryan: That is page 3 of my copy.

Q. You testified yesterday that in August, 1935, you made [1974] a statement under oath to the effect that the deviation on the compass of the “Denali” averaged from one and one-half to two and one-half degrees. In view of the fact that you have

(Testimony of Peter Albert Obert.)

used that word "average", will you please tell me what the maximum deviation was on any heading?

The Court: Before answering that question—if the question is complete—will you accommodate counsel by referring to the page?

Mr. Ryan: I refer to page 5 of his sworn statement which he testified yesterday he did swear to, on August 2, 1935.

Mr. Long: There is no such testimony. You are referring to the statement in the District Attorney's office?

Mr. Ryan: Yes.

Mr. Bogle: He didn't swear to it.

Mr. Ryan: Look at page 1428 of the record.

The Court: Counsel is now referring to what this witness testified yesterday, relating to what he did.

Mr. Ryan: Yes; page 1427 and page 1428 of the record. He testified yesterday that he made that statement under oath.

The Court: He made a statement?

Mr. Ryan: Yes; he made a statement, and the statement that he said he made was that the deviation on the compass averaged from one and a half to two and a half degrees. Now I am asking him what the maximum was that he found on any heading.

The Witness: I don't remember making such a state- [1975] ment to you.

Q. (By Mr. Ryan) You cannot tell us the maximum there was on any heading?

(Testimony of Peter Albert Obert.)

The Court: Can you now tell?

Q. (Continuing) Can you now tell us the maximum there was on any heading, the maximum deviation on any heading of the "Denali"?

A. Well, as far as I remember, about one or one and a quarter, one and a half, something like that, was the most that she had.

Q. The statement you made in the United States Attorney's office was made in August, 1935, shortly after the stranding, wasn't it?

Mr. Bogle: What page is that?

Mr. Ryan: The one I read, page 5.

Q. Your testimony now is that you have forgotten, you don't remember the deviation, is that right, the greatest deviation on any heading of the "Denali"?

A. I remember that you asked me by the pilot house compass, what I was steering at that time.

Q. Well, your testimony will stand as it is given in the record.

A. Well, I don't remember anything about it.

The Court: He says he doesn't remember. Now, ask him something else.

Q. Captain, if in steering the course from the fix off Triple Island up through Caamano Passage, suppose a dense fog had set in, you wouldn't have run aground if there was no current setting you to westward, no tidal current;— [1976]

A. In a thick fog I would have turned around.

Q. (Continuing) —and no westerly deviation, would you?

(Testimony of Peter Albert Obert.)

Mr. Long: Let the witness answer the question.

The Court: The witness has interjected a part answer before the question was finished.

Mr. Long: I thought he had finished.

The Court: Read the question. (Record read as follows:

“Q. Captain, if in steering the course from the fix off Triple Island up through Caamano Passage, suppose a dense fog had set in, you wouldn't have run aground if there was no current setting you to westward, no tidal current,—

A. In a thick fog I would have turned around.”)

The Court: This is another question with an “if” or condition stated in it which has nothing to do with what you were doing on the occasion, but it is a question that is complete in itself without reference to what you actually did on the ground.

Mr. Bogle: I enter an objection to it, Your Honor, as not being proper cross examination, as being a hypothetical question not based upon any evidence adduced in this case, but the assumption is entirely contrary to the positive evidence.

The Court: Objection overruled.

Q. (By Mr. Ryan) Will you answer the question.

A. I answered it. I would never attempt to go in there in a fog.

(Testimony of Peter Albert Obert.)

Q. That is the only answer you want to make to that question?

A. Yes, sir.

Q. On setting this course from the fix off Triple Island, [1977] up through Caamano Passage, did you set a course which would run you aground, or not?

A. No; I wouldn't set a course that would run me aground, no.

Q. And you didn't on that night, either, did you; you didn't deliberately set a course from your fix off Triple Island which would run you aground, did you?

A. No.

Q. It would have run you safely through the channel, wouldn't it?

A. That is what I figured on doing, yes.

Q. Certainly.

A. In fact, I did so.

Q. If your compasses were unreliable and had a deviation that you didn't know about you would go aground under those circumstances, wouldn't you?

A. If I didn't know?

Q. Yes.

A. But I did know.

Q. And you wouldn't have to have any current to help you get around, you would go aground just because you didn't know that deviation on the compasses, isn't that right?

(Testimony of Peter Albert Obert.)

Mr. Long: That is objected to as argumentative, Your Honor.

Q. (Continuing) On the course that you set through Caamano Passage.

Mr. Long: I think the witness has endeavored to answer that.

The Court: Objection overruled.

The Witness: I am not answering. [1978]

Q. (By Mr. Ryan) Now, Captain, when you set this course North $\frac{3}{4}$ West by standard compass from the fix off Triple Island, you made an allowance for a possible or expectable being thrown to the westward from some cause, didn't you?

Mr. Bogle: May I have that question?

The Witness: Yes; I expected——

Mr. Bogle: (Interposing) Just a minute, Captain. (Last question read.)

The Witness: On account of the current.

Q. You never saw any current, did you, on that night?

A. But you can feel it sometimes in the water.

Q. You never saw it, did you?

A. No, I didn't see it, no.

Q. You mean you reached your hand down in the water and felt it?

A. Don't ask me foolish questions.

Q. What do you mean by saying that you could feel the current?

A. On the ship, yes.

(Testimony of Peter Albert Obert.)

Q. You mean that standing on the bridge sailing along you could feel the current, is that what you mean to say?

A. On a ship sometimes she will start to swing on you, turn. There is always an eddy and a current. You can tell when a ship starts to steer bad.

Q. Exactly. You can tell when a ship starts to steer bad, and suppose her compass is in bad condition she will start to steer bad, won't she?

A. I never noticed that.

Q. Well, she would, wouldn't she, if your compasses were in bad condition. [1979]

A. But the compasses were not in bad condition.

Q. I asked you to assume they were.

A. I am not assuming that.

Q. Then she would steer just as you described it, wouldn't she? Answer the question.

A. No; I am not answering that.

Q. You are not answering the question?

A. Not that.

Q. All you know is that at some time after you set this course from this fix off Triple Island, which you had carefully ascertained, and after the course had been laid down on the chart, magnetic, and after you had made some allowance for being thrown to the westward from some cause, nevertheless, you found yourself still further to the westward than you had allowed for, isn't that so?

A. About 1:30 in the morning, yes.

Q. An unknown westerly deviation of the compass would account for that result, wouldn't it?

(Testimony of Peter Albert Obert.)

A. The deviation of the compass was known.

Q. But if it was unknown it would account for that result, wouldn't it?

A. It was known. We knew what we were doing.

Q. Answer the question. If the deviation was unknown it would account for that result, under those circumstances, wouldn't it?

A. If it was unknown it would set me ashore before I got there.

Mr. Long: I submit, if Your Honor please, that the witness has stated, to my acknowledge, at least eleven times that what set him to the westward was the tide. [1980]

The Court: The objection is overruled in this connection. I will say, Mr. Ryan, that it seems to me that the examination about the matter of deviation and its effect here, its supposed effect on certain supposititious questions and situations, has been rather fully and exhaustively put to this witness. Of course the Court cannot re-constitute these witnesses, the nature or method of the mental suppositions of this witness or any other witness, but we have to take the witness as we find him, and consider his linguistic ability, and taking those things into consideration it seems to me you have pretty fully covered the matter.

Mr. Ryan: All right. With Your Honor's statement I will abbreviate this. But may I have an answer to that last question?

(Testimony of Peter Albert Obert.)

The Court: Yes. Read the question. (Question read as follows:

“Q. If the deviation was unknown it would account for that result, under those circumstances, wouldn't it?”)

Q. (By Mr. Ryan) I am asking you to just make the assumption.

A. No; I am not making any assumption. I have no answer for it.

Q. If that assumption were true, then that would account for that result, wouldn't it?

A. No, sir.

Q. Why not?

A. Because there was no deviation, and I was piloting.

Q. All right. Now, you knew your position off Triple Island to be 10½ miles distant, abeam, on this course that you [1981] had been following up to that point, didn't you, Captain?

A. Yes, sir.

Q. And from that time on you steered a straight and steady course by your compass, up here until you got near Caamano Passage, didn't you?

A. No, sir. I changed it many times before I got up to there.

Q. Well, your log book shows you made no change at all, doesn't it?

A. Yes.

Q. And then before the Steamboat Inspectors you told them you made one haul to the right, off

(Testimony of Peter Albert Obert.)

Prince Lebo Island for 15 or 20 minutes, isn't that so?

A. Yes.

Q. And hauled to the north, isn't that right?

A. Yes.

Q. On a North course?

A. Yes.

Q. For 15 or 20 minutes?

A. Yes.

Q. All right. Now here in this trial you say, you testified on direct examination the changes you made first one haul to the right, or East, of one-quarter point, and then one of one-eighth point, and then another one that you didn't specify the amount, isn't that right?

A. Several changes, yes.

Q. Under those circumstances, if you steered from Triple Island Light, starting out on this course North $\frac{3}{4}$ [1982] West magnetic, and the only changes you were making were those three changes to the right, or eastward, you would know absolutely that you would not be to the left or westward of your course unless you were thrown there by tidal current, or by the unknown deviation of the compass, isn't that so?

A. Tidal current, yes.

Q. Or unknown deviation of the compass, if it existed, isn't that so?

A. But there was no deviation.

Q. But if it existed?

(Testimony of Peter Albert Obert.)

A. In such a short distance there wouldn't be any.

Q. If it existed it would account for it?

A. It didn't exist.

Mr. Long: I object to this as repetitious.

The Court: This is a summarized question and I will let counsel propound this question. The question is stated clearly, and I think it may be answered by this witness. Read the question: (Question read as follows:

“Q. Under those circumstances, if you steered from Triple Island Light, starting out on this course North $\frac{3}{4}$ West magnetic, and the only changes you were making were those three changes to the right, or eastward, you would know absolutely that you would not be to the left or westward of your course unless you were thrown there by tidal current, or by the unknown deviation of the compass, isn't that so?”) [1983]

The Court: If there was unknown deviation.

Mr. Ryan: Yes, that is right.

Mr. Bogle: Now, if Your Honor please, I think that the question——

Q. (Mr. Ryan, interposing) Yes, if there was unknown deviation.

Mr. Long: The question assumes that there were only three changes, and the witness had said many times that there were more than three changes.

(Testimony of Peter Albert Obert.)

Mr. Ryan: Please do not interrupt my cross examination.

The Court: The objection is overruled. I am going to let counsel propound this question. Now, will you try to answer the question?

The Witness: Well, there is no unknown changes.

The Court: I know, Captain, but suppose there were.

Mr. Ryan: Not suppose there were. I don't want him to suppose that there were any unknown changes.

The Court: Very well.

Mr. Ryan: Just read the question, but I do not want him to suppose that there were any unknown changes.

The Court: Well, strike out what I said in that regard.

Mr. Ryan: I am sorry, Your Honor.

The Court: Proceed.

Mr. Ryan: Read that same question. Just read the question.

The Court: Yes, just read the question.

(Question read) [1984]

A. I cannot answer that.

The Court: He says that he cannot answer that. Then proceed and ask him another question.

Mr. Ryan: Yes.

Q. (By Mr. Ryan) Well, under those circumstances, assuming——

A. (Interposing) I am not assuming anything.

(Testimony of Peter Albert Obert.)

Q. (Continuing)—merely for the purpose of argument, that you were wrong in your assumption that there was a tidal current setting you to the left or westward, then the only reasonable explanation of the “Denali’s” running to the westward and getting on that reef would be unknown deviation of the compass, isn’t that so?

A. No.

Q. Why not?

A. I know what it was. I know what the current was.

Q. Well, I am asking you to assume——

A. (Interposing) I am not assuming anything.

Q. (Continuing)—that you were wrong.

A. I don’t assume anything.

Q. Assume that the current was throwing you to the west.

A. I don’t assume anything.

Q. If you would assume that you were wrong, then there is no reasonable explanation here of this stranding excepting unknown deviation of the compass, isn’t that right?

A. The deviation was all known.

Q. What?

A. The deviation was all known.

Q. I see.

A. I didn’t assume it. [1985]

Q. But if there were no current setting to the westward at all——

A. (Interposing) But there was a current.

(Testimony of Peter Albert Obert.)

Q. (Continuing)—can you give me a reasonable explanation for—if there was no current setting you to the westward can you give me——

A. (Interposing) We don't——

Q. (Interposing) Please, will you not interrupt the question.

A. All right.

Q. Now, listen to the question. I am having difficulty in having you answer the question.

A. I know.

Q. You understand that, Captain, don't you? Now, I am trying to be as fair as I can be about these things with you, Captain.

A. Yes, I know.

Q. Now, listen to my question. If there was no current—no tidal current setting you to the westward, or left of your course, and if you were at all times steering this course by standard compass North $\frac{3}{4}$ West from that known fix off Triple Island, can you give me any reasonable explanation of why the "Denali" went to the west or left of her course and struck that reef, excepting unknown deviation of the compass?

A. Yes. I would have been ashore on Prince Lebo Island if I had kept on that course if there had not been any current.

Q. Why, Captain, you have laid the course down on the chart and it doesn't even go near Prince Lebo Island. Will [1986] you look at the chart here, Petitioner's Exhibit 33——

(Testimony of Peter Albert Obert.)

A. (Interposing) Well, the other one does not——

Q. (Continuing)—and see if that is not so?

Mr. Long: Let the witness answer. I am tired of all this.

Mr. Ryan: Now, please——

The Court: (Interposing) Your remarks are stricken, Mr. Long, and you are directed not to repeat any such remarks.

Mr. Long: Very well.

The Court: But if you have any objection you can make your objection.

Mr. Long: That is what I am intending to do. I am intending to make one.

The Court: The Court will rule upon any objection made to the Court, but there should not be any indulgence in side remarks between counsel.

Mr. Ryan: Read the question as far as it went.

(Question read as follows:

“Why, Captain, you have laid the course down on the chart and it doesn't even go near Prince Lebo Island. Will you look at the chart here, Petitioner's Exhibit 33, and see if that is not so?”)

Mr. Ryan: I will strike that question and ask it in this way.

Q. (By Mr. Ryan) This course North $\frac{3}{4}$ West that you have laid down from Triple Island does not even touch Prince Lebo Island, does it?

A. It is pretty close to it.

(Testimony of Peter Albert Obert.)

Q. How far away is the nearest part of Prince Lebo Island [1987] to that line that you have laid on the chart?

(Witness does not answer)

Q. Will you look at the chart, Petitioner's 33, and tell me?

A. Why, it would be about a mile off there, but I would have been ashore over here, however, just the same (indicating on Petitioner's Exhibit 33).

Mr. Long: What do you mean by "over here"? State that for the record.

A. Over here—on Dundas Island (indicating on Petitioner's Exhibit 33).

Q. (By Mr. Ryan) You mean that you would have run into Dundas Island?

A. Yes, sir.

Q. Later on some time?

A. And if I had made this course good (indicating on Petitioner's Exhibit 33) I would have been away from that, wouldn't I?

Q. You mean the course North by West $\frac{1}{8}$ West?

A. Yes, sir.

Q. So there is no doubt—I will strike that. Now, how far away could you see Zayas Island when you first cited it on that night?

A. Well, it was about 1:30; somewhere around there.

Q. I am not asking you about the time. I am asking you how far away it was; what the visibility was of Zayas Island.

(Testimony of Peter Albert Obert.)

A. About four miles—three or four miles.

The Court: At this time we will take a five minute recess.

(Recess) [1988]

The Court: You may proceed.

Mr. Bogle: If Your Honor please, Mr. Pellegrini is here now. Possibly we could take up the demand that I made of him when he was not present at the opening of court.

The Court: Yes. Mr. Reporter, will you read that statement to Mr. Pellegrini?

(Statement read as follows:

“If Your Honor please, in view of what transpired yesterday, on behalf of the petitioner at this time I make a demand that they produce, in connection with the examination of this witness, the statement which Mr. Pellegrini stated in open court yesterday he took from this witness on an occasion prior to the one referred to by Mr. Ryan. I think that we are entitled to the other statement as well as this for the purpose of examination.”)

The Court: And then Mr. Bogle referred to certain pages of the record.

(Statement of Mr. Bogle read as follows:

“I might say that Mr. Pellegrini’s statement to that effect appears on pages 1402 and 1403 of the record.”)

Mr. Pellegrini: If the Court please, this was an investigation made in the course of determining for

(Testimony of Peter Albert Obert.)

our own use whether or not there was a cause of action. It was in the nature of a confidential communication under the direction of the Attorney General. However, if counsel wishes to know about it, I will state that there was no written statement.

[1989]

The Court: There was no written statement. It was an oral statement?

Mr. Pellegrini: Yes. There was no oral statement other than this other statement that was referred to yesterday.

Mr. Bogle: Could you tell us when this oral statement was taken?

Mr. Pellegrini: My recollection is it was taken on the same day as this written statement, or the day before. I don't remember which it was.

Mr. Bogle: In other words, he was up at your office twice?

Mr. Pellegrini: Yes, he was up there twice.

The Court: Very well. Proceed.

Mr. Ryan: What was the last question?

(Questions and answers read as follows:

“Q. Now how far away could you see Zayas Island when you first cited it on that night?

A. Well, it was about 1:39; somewhere around there.

Q. I am not asking you about the time. I am asking you how far away it was; what the visibility was of Zayas Island?

A. About four miles—three or four miles.”)

(Testimony of Peter Albert Obert.)

Q. (By Mr. Ryan) What was the visibility on that night at the time that the vessel struck—how many miles—the range of visibility?

A. Well, that is pretty hard to say. It was just a little before break of day. [1990]

Q. How many miles visibility—the range of visibility is the question.

A. Oh, you could see clear about a mile or a mile and a half—something like that—but you could see the loom of the island.

Q. Did you or did you not testify before the Steamboat Inspectors at the investigation in May, 1935,

“Q. When this vessel struck what was the visibility like?”

Mr. Long: What page?

Mr. Ryan: Page 4.

Q. (By Mr. Ryan) And did you not testify,
“A. I would say about two miles. Of course,
we could see a light farther”.

Did you give that testimony?

A. I believe I did.

Q. Is that testimony true?

(Witness does not answer)

Q. Do you think that you could see Zayas Island any farther away than two miles?

A. Yes, sir.

Q. How did you measure the distance?

(Testimony of Peter Albert Obert.)

A. Well, shortly after—about shortly after 1:30 I could see the loom of it; just the loom of the island.

Q. Yes.

A. Not very plain.

Q. Well, you were within two miles of the island before you could make it out plainly, isn't that right?

A. Yes, sir; but I saw it before that.

Q. How long does it take the "Denali" to run two miles at eight and a half knots? [1991]

A. Oh, about fifteen minutes.

Q. And she struck at 2:44, didn't she?

A. 2:44, yes.

Q. Now, the currents—are there any currents shown on this Chart 2828, Petitioner's Exhibit 33—tidal currents?

A. Yes. There are lots of currents shown there.

The Court: You may go down to the chart and show them.

(Witness goes to Petitioner's Exhibit 33)

A. They are shown here (indicating on Petitioner's Exhibit 33).

Q. The witness indicates the arrows in Caamano Passage between Zayas Island and Dundas Island. Now, this one on the right hand side, what tidal current is that (indicating on Petitioner's Exhibit 33)?

A. That is three knots.

(Testimony of Peter Albert Obert.)

Q. It says, "One knot" on it, doesn't it?

A. There is both one and three. One flood—

Q. (Interposing) I am asking you about the one on the right hand side. That says, "One knot", doesn't it?

A. One knot.

Q. I am talking about that one and not about any other one.

A. How about this one (indicating on Petitioner's Exhibit 33)?

Q. Wait a minute. I am not asking about any other one for the moment. The one that I am asking you about is on the right hand side or east side marked "One Knot", isn't that right?

A. Yes, sir. [1992]

Q. Now, what does that arrow represent?

A. Flood tide.

Q. Now, there is another arrow—and the direction of that is roughly to the north, is it not?

A. Yes, sir.

Q. All right. Now, take this one to the west or left of that (indicating on Petitioner's Exhibit 33).

A. Yes.

Q. That arrow that points the other way?

A. Yes, sir.

Q. It says, "Two Knots" on it, doesn't it?

A. Yes, "Two Knots".

Q. It says, "2", doesn't it?

A. Yes, sir.

(Testimony of Peter Albert Obert.)

Q. And that points roughly to the south, doesn't it?

A. Yes, sir.

Q. Who put those arrows on the chart?

A. The Hydrographic Office.

Q. The United States Government?

A. The United States Government, yes, sir.

Q. Have you ever made any experiment with any instruments to determine the set and force of the tidal current—

A. (Interposing) No.

Q. (Continuing)—in that passage?

A. No.

Q. All right. Now, aren't there some other—

A. (Interposing) Currents?

Q. Yes, tidal currents.

A. Yes.

Q. Shown on that chart? [1993]

A. Yes.

Q. In the vicinity from Triple Island up to Caamano Passage?

A. It shows it in here. It shows a four knot current.

Q. I am not asking you way over there to the east of Brown Passage.

A. Well, that is where the current comes from.

Q. Now, listen to the question. The question is, From this fix off Triple Island up to this reef where you stranded, there are some other tidal currents shown on that chart, are there not?

(Testimony of Peter Albert Obert.)

A. Yes, sir.

Q. Where are they?

A. They are down here (indicating on Petitioner's Exhibit 33). There is current there (indicating).

Q. Well, the ship is not over there. Will you please listen to the question and then answer it.

A. Yes.

Q. From your fix off Triple Island, the course that you laid out, North $\frac{3}{4}$ West, up through Caa-mano Passage——

A. (Interposing) Yes.

Q. (Continuing) ——aren't there some more arrows, indicating tidal current on that course that you traversed between Triple Island and the reef on which you stranded?

A. There is one there (indicating on Petitioner's Exhibit 33).

Q. Yes; all right. Now, we will take this one. The witness indicates the one below the large—the one to the southwest of the—or to the west of the extreme southwest corner of Dundas Island—the right hand [1994] side one first. Now, that right hand side one points roughly north, does it not?

A. Approximately, yes, sir.

Q. And that is the flood tide, isn't it?

A. Well, they are both alike.

Q. Yes, but that is the flood tide, isn't it?

A. Well, they are both alike. There is one flood and one ebb.

(Testimony of Peter Albert Obert.)

Q. Wait a minute. I want to have the record clear. The one on the right is the flood tide?

A. Yes.

Q. It is force one knot, is it not?

A. Yes, sir.

Q. And it is shown so on the chart?

A. Yes, sir.

Q. Now, the one to the left, or west of that, points roughly to the south, does it not?

A. Yes, sir.

Q. And that is the ebb tide?

A. Yes, sir.

Q. And that is force one knot?

A. Yes, sir.

Q. All right. Now, there is also a current diagram on this chart, isn't there—down here in the lower left hand corner?

A. Yes, sir.

Q. On Petitioner's Exhibit 33?

A. Yes, which shows that the current is irregular.

Q. Now wait a minute. Now, that current diagram refers to points on this chart, A, B, C and D, does it not? [1995]

A. Well, it refers to all of them.

Q. Well, will you look there and see. Doesn't it refer to those?

A. I have looked at it. I know what they are.

Q. It refers to points A, B, C, D and E, does it not?

(Testimony of Peter Albert Obert.)

A. Yes.

Q. And point A is here, shortly to the west of Zayas Island, isn't it (indicating on Petitioner's Exhibit 33)?

A. Yes, sir.

Q. And point B is down here between Triple Island Light—

A. (Interposing) Yes.

Q. (Continuing) —and the reef on which you stranded?

A. Yes, sir.

Q. Somewhat to the eastward of your course, isn't it?

A. Yes, sir.

Q. And point C is right near your fix off Triple Island?

A. Yes, sir.

Q. Just a little to the east, isn't it?

A. Yes, sir.

Q. All right. Now, that current diagram shows the force and direction—

A. (Interposing) Yes.

Q. (Continuing) —of the tidal currents at every hour throughout the twenty-four hours, doesn't it?

A. That is what is given there.

Q. Yes. And the Canadian charts in that respect are just the same as the American charts, are they not; that is, British Admiralty Chart 1737?

(Testimony of Peter Albert Obert.)

A. The same thing. They are all alike. The same soundings, triangulations and contour of the land—they are all [1996] alike.

Q. As far as that tidal current is concerned that British Admiralty Chart 1737 is just the same as the American Chart 2828, isn't it?

A. I don't remember. I have never seen that.

Q. You have never seen the chart?

A. Yes, I have seen the chart, but I don't remember seeing the current diagram on it.

Q. You don't remember seeing the current diagram on it?

A. No, sir.

Q. That is the chart that the British and Canadian vessels use through there, isn't it?

A. Well, they use both. They use both American and Canadian charts.

Q. But at any rate all the sailing charts which masters and pilots use who are going up through Caamano Passage, or which they should use in good navigation show this current diagram down here at the lower left hand corner, do they not?

A. Yes.

Q. And they also show these various arrows at these various places?

A. Yes, sir.

Q. Giving the force and direction of the tide, do they not?

A. Yes, sir.

(Testimony of Peter Albert Obert.)

Q. So that with those charts you have an official statement from the United States Government and from the British Government and from the Canadian Government as to just what the force and direction of the tidal current is at every hour throughout the twenty-four hours all the way [1997] up through there, do you not?

A. Yes, sir.

Q. Now, isn't it a fact that there is no appreciable set to the westward or left at all in proceeding from, say, 1:15 A. M. on May 19, 1935, up through Caamano Passage for at least an hour of slack water, and from then on all you would get would be the influence of an ebb tide—of the beginning of an ebb tide which has, when it is running at its strongest, only a speed of two knots in a roughly southerly direction?

A. No.

Q. Isn't that so?

A. No.

Mr. Bogle: Now, wait a minute. I wish you would show him that on the chart.

Q. (By Mr. Ryan) Show me where it is not, using those current diagrams—

A. (Interposing) Yes.

Q. (Continuing) —and arrows as given to you by the government.

A. Come here, and I will show you. Where would the ebb tide come from (looking on Peti-

(Testimony of Peter Albert Obert.)

tioner's Exhibit 33). I pay no attention to that (indicating).

Q. As shown by the arrows and current diagrams given by the government.

A. I pay no attention to that (indicating).

Q. Well, what do you pay attention to?

A. To the current coming out of here (indicating on Petitioner's Exhibit 33). That is where the tide comes [1998] from.

Q. Well, did you pay any attention to——

A. (Interposing) Oh, that is all rot that you say. There is no use to answer that. That is a foolish question you ask me.

Q. (By Mr. Ryan) Now, do you pay any attention to——

Mr. Bogle: (Interposing) The witness was referring to the current coming "out of here", and I would like to know what "out of here" means.

Mr. Ryan: Now, I would like to develop this in my own way.

The Court: Do you have any objection to make, Mr. Bogle?

Mr. Ryan: And there is no question before the Court.

Mr. Bogle: Yes, I have an objection to make.

The Court: What is your objection?

Mr. Bogle: The witness in answering referred to "out of here" and it does not mean anything in the record, and I think that he ought to be allowed to state——

(Testimony of Peter Albert Obert.)

The Court: (Interposing) Counsel, as I understand it, is trying to accommodate that situation, and was doing his best to do it. He was not getting the right kind of cooperation from the witness. If the witness, in answering will keep his mind on the question and answer that, and try to avoid an argumentative attitude we will get along faster. Proceed.

Q. (By Mr. Ryan) In navigating from Triple Island Light up through Caamano Passage is it usual practice and [1999] safe practice for navigators to place any reliance on these arrows and this hourly current direction and force diagram at these various places——

A. (Interposing) No.

Q. (Continuing) ——that the United States Government and the British Government have put on here—on this Chart 2828?

A. No.

Q. No reliance whatever?

A. Not on this here (indicating), but right here (indicating on Petitioner's Exhibit 33).

Mr. Long: Now, may the witness explain what he means by "right here"?

The Court: Yes.

Mr. Ryan: You will have a chance to have him explain that on redirect examination. I am having difficulty enough.

The Court: The objection is sustained, and the Court will ask the witness if there is any explana-

(Testimony of Peter Albert Obert.)

tion that he wishes to make about his statement concerning currents “right here”, and if he does, to indicate on the map the position that you, the witness, are indicating when you use the words “right here”.

The Witness: Right in here it shows from 1 to 2 knots, does it not (indicating on Petitioner’s Exhibit 33)?

The Court: Let the record show that he is pointing to the channel up Caamano Passage—

The Witness: (Interposing) And it has been proven many a time. [2000]

The Court: (Continuing) —between approximately the place of stranding and a point opposite on Dundas Island.

The Witness: Yes.

Mr. Long: Now go ahead with your explanation.

The Witness: It has been proven that the tide runs as much as five knots an hour through here (indicating on Petitioner’s Exhibit 33).

Q. (By Mr. Ryan) All right.

A. The ebb tide. Here it shows four, and the ebb tide comes out here (indicating on Petitioner’s Exhibit 33). Here is where the tide comes from (indicating on Petitioner’s Exhibit 33).

Q. (By Mr. Ryan) Referring to the middle part of Brown Passage.

A. Referring to the middle part of Brown Passage. She runs four miles an hour there. She comes out from Portland Canal, ninety miles up there,

(Testimony of Peter Albert Obert.)

and she comes out through here (indicating on Petitioner's Exhibit 33).

The Court: Through what?

The Witness: Through this little passage here (indicating on Petitioner's Exhibit 33).

The Court: What is that little passage?

The Witness: That is Hudson Bay Passage.

Mr. Ryan: All right.

The Court: Now ask him another question.

Q. (By Mr. Ryan) Have you ever used any instrument or used tidal observation methods such as are standards by the various governments and mariners to determine—— [2000½]

A. (Interposing) No, sir.

Q. (Continuing) ——any of those things?

A. No, sir.

Q. Will you give me the names and addresses of the persons whom you say have proven that the United States Government and the British Government are wrong in their latest sailing charts as to what they inform all mariners right now—strike out the words “right now”—are the currents—are the tidal currents that will be encountered in that area?

A. The tidal currents——

Q. (Interposing) Will you answer my question? I am asking you for the names and addresses of those men.

A. You can easily find that out by those right here.

(Testimony of Peter Albert Obert.)

Mr. Long: I object to that. With reference to the government information counsel read from a book here the other day where that was not to be relied upon. He read that in connection with some questions that he asked one of the other witnesses the other day.

The Court: Objection overruled. Read the question. I wish you, the witness, would keep your mind on the form of the question, and if it turns out that it is not a proper form of question the Court of its own motion will sustain an objection to it, or if counsel present will object, the Court will rule upon it. But it is not for you, witness, to say whether the question is proper. You keep your mind on the question, and if you can answer it, please answer it, and if you cannot, just say so. Proceed.

Mr. Ryan: Just read the question. [2001]

(Question read as follows: "Will you give me the names and addresses of the persons whom you say have proven that the United States Government and the British Government are wrong in their latest sailing charts as to what they inform all mariners are the currents—are the tidal currents that will be encountered in that area?")

A. You can easily find that out right here from the men who are in this courtroom.

The Court: The question is for you to give the names of the men that you know would prove that, touching that subject.

The Witness: No, I do not know their names.

(Testimony of Peter Albert Obert.)

The Court: Proceed.

Q. (By Mr. Ryan) Now, you do realize very keenly, Captain, do you not, that if the tidal current—you realize very keenly, do you not, Captain, that if the United States Government and the British Government are correct in the statements they make to mariners on these usual sailing charts, U. S. H. O. 2828 and British Admiralty Chart 1737 in the form of these current diagrams for each hour of the twenty-four hours in that area, and in the form of these arrows with the exact magnetic direction and force—I say you realize very keenly that if the governments are right in what they say there, then the only reasonable explanation of the “Denali” getting over on that reef is because she had an unreliable compass which had a deviation, don’t you?

Mr. Long: I object to that as argumentative, and [2002] repetitious, and nothing but a statement and not a question.

The Court: This man is supposed to be an expert navigator, and I think it is competent to ask him that question. The objection will be overruled.

A. I am not saying that the chart——

Mr. Bogle: (Interposing) We didn’t put him on for that purpose. We merely asked him for events in connection with that particular voyage.

The Court: But he has stated his long years of experience as a navigator in Southeastern and Southwestern Alaska.

(Testimony of Peter Albert Obert.)

Mr. Bogle: That is correct, but we only put him on in connection with this voyage.

The Court: The objection is overruled.

Mr. Long: Go ahead and answer the question, Captain.

Q. (By Mr. Ryan) Will you answer the question, Captain?

A. I am not saying that the chart is wrong, but I am saying that those arrows are wrong. It does not show the amount of current that runs through there—the strength of it.

Q. But you realize that unless they are wrong the only reasonable explanation for the “Denali” getting over on that reef where she stranded is something wrong with the compass?

A. No, no.

Q. Don't you?

A. No, no. I say——

Q. (Interposing) What other—— [2003]

Mr. Long: (Interposing) Wait a minute. Let him answer the question. He hasn't finished.

Mr. Ryan: Let me put my question.

The Court: Proceed.

Q. (By Mr. Ryan) What other reasonable explanation can you give under those circumstances?

The Court: Other than the current.

Mr. Ryan: Yes.

Q. (By Mr. Ryan) Other than the current that is contrary to the government charts.

A. I am not saying that the government chart is wrong; absolutely not; but just those arrows.

(Testimony of Peter Albert Obert.)

Q. But if the arrows on those government charts are correct, then there is no reasonable explanation you can give us for this stranding excepting something wrong with the compass?

A. No. The currents set me off. Wrong currents.

Q. You cannot give me any other reasonable explanation—

A. (Interposing) No, sir.

Q. (Continuing) And that current would have to be one which is not shown on any chart which you can produce, isn't that right?

Mr. Long: I object to that as being argumentative.

The Court: Objection overruled.

Mr. Ryan: Read the question.

(Question read)

(Witness does not answer)

The Court: He may answer that question if he can, and if he cannot, he may say so.

A. I have no answer. [2004]

Q. (By Mr. Ryan) Now, in making this allowance for tidal current in setting your course off Triple Island, from that fix, up through Caamano Passage, what force and direction of tidal current did you expect and allow for?

A. About three to four knots of current.

Q. In what direction?

A. Southwest.

(Testimony of Peter Albert Obert.)

Q. Did you or did you not testify at the trial before the United States Steamboat Inspectors in June, 1935, at page 10, as follows:

“Q. Is it true that the tides and the currents are to some extent an unknown quantity, regardless of the instruments?

A. Well, there is a very strong tide where the tide runs north and south.”

Did you or did you not so swear?

A. Yes; in the Passage.

Q. It runs north and south in the passage, you want to say now?

A. That is the only way she could run.

Q. The island here, Dundas Island, is so big that the tide couldn't go underneath the island, could it?

A. I never saw it done.

Q. No; of course not. It would have to come down here, like through a little box, or through the neck of a bottle; it would have to follow the coast line of Dundas Island, the west coast line of Dundas Island.

A. For a short distance, yes.

Q. Now, Captain, what was the title of the chart that you [2005] were using for navigating the “Denali” between Triple Island Light and Caamano Passage on the night of the stranding?

A. That is the chart right there. (Indicating chart on easel.)

Q. What was the title of it?

(Testimony of Peter Albert Obert.)

A. "Edeye Passage to Portland Inlet."

Mr. Ryan: The witness goes down to the chart and reads the words on it. I want the record to show that.

Q. Now go back to the stand, Captain. Did you or did you not testify under oath on August 2, 1935, in the United States Attorney's office, before the persons that I described to you yesterday, and under the circumstances I described to you, as follows: pages 19 and 20——

Mr. Ryan: Oh, wait a minute; he testified yesterday he did make those answers under oath. I withdraw that question.

Q. (By Mr. Ryan) You testified yesterday that the title of the chart that you were using for navigation, that is, the title of the United States chart, was "Part of Dixon's Entrance and Brown Passage", didn't you? You testified here yesterday afternoon to that effect?

A. Yes.

Q. That is not the title of this chart No. 2828, is it?

A. It is there; there is Brown Passage and Dixon's Entrance.

Q. The title of this chart is "Brown Passage and Dixon's Entrance"?

A. It is a different name, that is all.

Q. There is a chart of Brown Passage and Dixon's Entrance, isn't there?

A. It is right there. [2006]

(Testimony of Peter Albert Obert.)

Q. I withdraw that question. I want to put it this way. What was the number of the chart?

A. I don't remember.

Q. The United States chart that you were using for navigating the "Denali" on the night of the stranding.

A. No. 2828, I think, is the number.

Q. You testified yesterday afternoon in answer to the question what was the number of the United States chart, "I am not sure. I think it was No. 8920." I am asking you now——

A. (Interposing) I don't remember what the number was.

Q. Well, there is a chart——

Mr. Bogle: (Interposing) I object to that, if the Court please. Counsel read yesterday afternoon from the statement that they say he made before the United States Attorney, where they claim he said it was No. 8920. He didn't testify yesterday afternoon with reference to No. 8920, to my knowledge.

Mr. Ryan: Yes, he did. He testified yesterday afternoon that he gave that answer on August 2, 1935.

The Court: Proceed.

Q. (By Mr. Ryan) There is a chart No. 8102 of that area, isn't there?

A. Yes.

Q. And that is the chart that the Petitioner brought in here that the third officer, Larson, saved?

(Testimony of Peter Albert Obert.)

A. The same chart, isn't it?

Q. It is the same chart as No. 2828, is that your idea?

A. It shows Triple Island, Brown Passage and Dixon's Entrance.

Q. If you didn't have on board the "Denali" chart No. 2828, [2007] with this current diagram on it, and with all these arrows indicating the force and direction of the current you would not be able to know, would you, what the force and direction of the tidal current was at these various places as given to you by the United States Government?

A. We usually know that, just how the current runs, and how it sets in.

Q. You would not know it unless you had memorized all that, would you?

A. Yes; we remember it pretty well.

Q. But you wouldn't have anything before you to give you the figures, and how it was at each hour of the 24 hours, and what the force and direction was?

A. We do piloting in Alaska, we don't look at the figures. We always have the charts out for reference.

Q. You were steering a compass course all the time from the point "A" as you went up to Caamano Passage, isn't that right?

A. Until I sighted land.

Q. Then you made these various hauls to the right?

(Testimony of Peter Albert Obert.)

A. Absolutely.

Q. And your third officer would write those on a slip of paper, wouldn't he, as you made each haul to the right?

A. But they were not put down in the book.

Q. They were not in the pilot house book?

A. No.

Q. He would record them as you made each one on pieces of paper?

A. I don't know whether he did or not.

Q. That would be the usual practice, wouldn't it? [2008]

A. No.

Q. It would not be the usual practice?

A. No.

Q. In the Alaska trade, for the third officer on watch to write down the change of course that was being made as it was being made?

A. No; not any changes like that. If he was to put them all down in the log book we would have the log book full of changes. You have to change quite often, many, many times a day.

Q. Now, Pilot, I want you to be fair here—well, strike that out. When you left Triple Island and headed up on this North $\frac{3}{4}$ West course you were steering by compass, were you not?

A. Yes.

Q. Nothing else?—by compass from a fixed position, steering in a known direction—

A. (Interposing) Not all the time.

(Testimony of Peter Albert Obert.)

Q. (Continuing) At a known speed?

A. Not all the way.

Q. But you were for a long time, a considerable time, weren't you?

A. Until I picked up the land.

Q. Now, you went all the way along there, and you finally—steering just that way—until you came up to the entrance to Caamano Passage, is that it?

Mr. Long: If Your Honor please——

The Witness: No, no, no.

Mr. Long: This witness has not so testified.

The Court: The objection is sustained because it is [2009] repetitious.

Mr. Ryan: I am trying to get the situation from then on.

The Court: The objection is sustained, change to something else.

Q. (By Mr. Ryan) Now, when you first saw land, all you saw was haziness and loom, when you first sighted it.

A. I sighted Zayas Island.

Q. There was nothing you could get a bearing on, was there?

A. That is right.

Mr. Long: That is objected to as repetitious. Counsel went all over that.

The Court: It seems so to me.

Mr. Ryan: I am going on from that point.

The Court: Then start at the place where you want to go on from, without going over the same

(Testimony of Peter Albert Obert.)

ground you have been over before. That is what is objected to.

Mr. Ryan: All right, Your Honor.

Q. (By Mr. Ryan) Here you are in a position where you know where you are, that is, you have been steering a compass course in a known direction, at a known speed of the vessel, from a fixed point right off Triple Island Light, you are going along there, you are certain of your position all the time, and you finally come to a point where you sighted some——

A. (Interposing) Land.

Q. Land—but it is not clear enough for you to take a bow and beam bearing on it yet. Now, under those circumstances any navigator would keep right on his compass course, just the way he was—he knew that is where he [2010] was, he had his dead reckoning position, didn't he, at that time?—Isn't that right?

Mr. Bogle: I object to that, if Your Honor please, as argumentative.

Q. (Continuing) You knew where you were at that time?

The Court: The objection is sustained.

Q. (By Mr. Ryan) Now, from that time on——

Mr. Long: (Interposing) What time?

Mr. Ryan: From the time he first saw this land looming up and couldn't get any bearings on anything, any bow and beam bearings on anything.

Mr. Long: At 1:30, you are speaking of?

(Testimony of Peter Albert Obert.)

Mr. Ryan: Please do not interrupt.

Mr. Long: I am trying to follow this.

The Court: The objection to it is sustained, and if there is some other question you wish to ask the witness, propound that question now.

Q. (By Mr. Ryan) When you are going along, and you know what you have been steering, and the direction and speed you have been going, from a fixed place off Triple Island—you are certain now from that point on——

Mr. Long: (Interposing) The same objection.

Q. (Continuing) ——and you suddenly sight land——

The Court: Mr. Ryan, the Court has directed that you change the subject matter of your inquiry.

Mr. Ryan: I am trying to go on from there.

The Court: The objection is sustained. Go to another subject if you wish to make further cross examination.

Q. (By Mr. Ryan) After you sighted this land or loom, on [2011] which you couldn't take any bow and beam bearing, you would have to keep on using your compass until you could take a bow and beam bearing on something, some landmark, wouldn't you?

Mr. Long: I object to that, Your Honor.

The Court: It is the same objection, and it is sustained, and you are directed to proceed with the examination on some other subject. Proceed.

Mr. Ryan: Exception, please.

(Testimony of Peter Albert Obert.)

The Court: Exception allowed.

Mr. Ryan: If the Court please, I was trying to show that the man would absolutely have to rely on his compass, and any navigator would.

Mr. Long: I objected to that, and I ask that the remarks of counsel be stricken.

Mr. Ryan: Until he could get a bow and beam bearing on known landmarks.

The Court: The ruling is sustained. You have been over it.

Mr. Ryan: I haven't been over that, I don't think, Your Honor.

The Court: As the Court recalls, the whole subject has been very fully gone into.

Mr. Ryan: Exception.

The Court: Exception allowed.

Q. (By Mr. Ryan) You say you made an allowance for a westerly deviation of the compass in setting that course from Triple Island up through Caamano Passage, is that right?

A. Just one degree allowed.

Q. Where did you get that deviation from; how did you know [2012] that was the deviation?

A. From the book.

Q. The compass deviation book?

A. The deviation book.

Q. What was the entry in the compass deviation book, if you remember?

A. On the North course it showed one, westerly.

Q. Was that an azimuth?

(Testimony of Peter Albert Obert.)

A. Yes, sir.

Q. When was that azimuth taken, that particular one?

A. Somewhere around off the north end of Vancouver Island I asked the second officer to take it.

Q. Were you on watch?

A. I was on watch at the time that I asked him, yes.

Q. He took an azimuth by the sun, is that it?

A. Certainly.

Q. That was from the north end of Vancouver Island, wasn't it?

A. I don't remember whether we were up to the end yet. Around the vicinity there some place.

Q. What time was it you asked the second officer to take that deviation?

A. I think it was in the afternoon.

Q. Afternoon of what date?

A. I don't remember the date.

Q. Was it or was it not taken when the "Denali" was proceeding from the north end of Vancouver Island, up north?

A. It might have been the next morning he took it.

Q. I am asking you if that is the fact?

A. I don't remember that. [2013]

Q. On what course was the "Denali" at the time that azimuth was taken, that is, what was her heading by compass?

A. I don't know.

(Testimony of Peter Albert Obert.)

Q. Well, look in the pilot house log book and tell me. (Handing log book to witness.)

The Court: If you can.

Mr. Bogle: He said he was not on watch——

Q. If you can, tell me what the heading was of the “Denali”, by compass, from the north end of Vancouver Island, up?

Mr. Bogle: I object to it on the ground that the witness has already stated that he was not on watch, and, therefore, he couldn't personally know what course she was on.

The Court: I do not recall that he did so state, Mr. Bogle. If he knows and can answer after looking at the log book counsel is entitled to have him do so, I believe. Are you able now to say what course or heading the vessel was on when that azimuth was taken?

The Witness: I couldn't say.

Q. What course was the “Denali” steering?
—You cannot say?

A. No.

Q. Was it taken from the north end of Vancouver Island, up north?

A. I think it was.

Q. Cape Scott is the north end of Vancouver Island, isn't it?

A. Yes.

Q. Doesn't your pilot house log book show that the “Denali” passed Cape Scott at 10:33 p. m. on May 17th?

(Testimony of Peter Albert Obert.)

A. Yes. [2014]

Q. So your story is that the westerly deviation that you allowed for was one which you found in the deviation book?

A. Yes, sir.

Q. And which was put there because you requested the second mate, or the captain, on the 17th, to take an azimuth to find out, isn't that right?

A. Yes, sir.

Q. And after you made that request of them they took the azimuth and put it in the book, is that right?

A. Yes.

Q. Now, the "Denali" was never on a course of North, or anywhere near North——

A. (Interposing) It wouldn't have to be.

Q. (Continuing)—from the time you made that request until you arrived at Triple Island Light, isn't that so?

A. How could he take it if she wasn't put on the North course?

Q. That is exactly the point. He couldn't take it unless the ship was on some course——

Mr. Long: (Interposing) Let the witness explain.

Q. (Continuing) Other than is shown in the pilot house log book of the "Denali".

Mr. Long: Let the witness explain.

(Testimony of Peter Albert Obert.)

The Witness: Why should it be shown, just for a few minutes? He could swing the ship around for a few minutes, put her on a heading north.

Q. You were not there at any time, were you?

A. No.

Q. While they were taking this supposed azimuth?

A. No. [2015]

Q. You do not know for how long they changed the course?

A. It wouldn't be very long.

Q. Any change of course is ordinarily entered in the log book?

A. No.

Q. When you are on a run like that?

A. No.

Q. Well, you were not in charge of the watch at the time, were you?

A. Not at that time.

Q. When it was being done?

A. At midnight, yes.

Mr. Long: May I make an objection? Counsel brought this up, and now he is arguing with the witness because he doesn't like the answer.

Mr. Ryan: I like the answer fine. I think the man is showing you up. Well, strike out what I just said.

Mr. Long: I do not want it stricken out.

The Court: It may be stricken out, and so ordered.

(Testimony of Peter Albert Obert.)

Q. (By Mr. Ryan) Now, if the "Denali" was at all times on the courses which are shown in the deck log book, up until she arrived at Triple Island Light, then no azimuth taken would give this supposed westerly deviation of which you saw an entry in the deviation book, isn't that so?

Mr. Long: That is argumentative, and it is objected to as speculative, argumentative, and not shown by the evidence or anything else.

The Court: The objection is overruled. He can ask this witness whether or not he did.

Mr. Long: Exception. [2016]

The Court: Exception allowed.

The Witness: If she didn't make her course how did she find her way all the way up to Triple Island without any trouble?

Q. Well, she was not on a north course at any time up to Triple Island, was she?

A. When I requested the second mate to take an azimuth on a North heading he did it. It would take more than five or six minutes to do it, would it?

Q. You do not know whether it was done?

A. I know it was done.

Q. Of your own knowledge?

A. I know it was done because I saw it in the book.

Q. And is that the deviation that you used?

A. Well, that is only one degree, that is all, which is nothing.

(Testimony of Peter Albert Obert.)

Q. And there is nothing in the log book showing that the "Denali" was on any such heading or course, is there?

A. No. Why should it be?

Q. There is nothing in there to even show that an azimuth was taken at that time, isn't that right?

A. That is not an azimuth book. That is the log book.

Q. Now, Captain, if you knew what the deviations were on the compasses of the "Denali" why did you ask the captain or the second officer to, in effect, put the ship on a course of North so that you could try to find out what her deviation was?

A. Because she had no heading on that before.

Q. There was none shown, no deviation—

A. (Interposing) We had no heading on that; we was not [2017] steering North.

Q. That is, there was no entry in the deviation book on a North heading?

A. Yes, there was.

Q. Before you asked the second mate or captain to get this azimuth and to put it down in the book?

A. That is right.

Mr. Long: Just a moment; he said something else a minute ago, and counsel broke in.

The Court: I know, but let it stand. The record will speak for itself.

Q. (By Mr. Ryan) When did you first realize that you were going to be the officer on watch taking this ship through Caamano Passage?

(Testimony of Peter Albert Obert.)

A. When I signed on with the rest of the crew.

Q. Did you know at that time that it would come on your watch, the time when the ship was going through Caamano Passage?

A. I didn't know exactly, no.

Q. When did you first know that?

A. Oh, on the way up.

Q. When you were off the west coast of Vancouver Island?

A. Well, after we started out through the Straits.

Q. And it was shortly after that that you looked at the deviation book and said, "Well, here we are going up through Caamano Passage and we don't know what the deviation is on the heading." and you spoke to the captain about it, or the second mate, and said "Find out what the deviation is on that; there is a course we are going to take"—is that right? [2018]

A. It is a long time——

Mr. Long: (Interposing) I am getting perplexed as to these statements in the record——

The Court: The objection is sustained.

Mr. Long: I ask that the statement be stricken.

The Court: It will be stricken. At this point we will take the noon recess. This afternoon the Court will require that this cross examination be promptly closed.

(Whereupon a recess was taken until 2:00 o'clock P. M., November 4, 1937.) [2019]

(Testimony of Peter Albert Obert.)

November 4, 1937,

2:00 o'clock P.M.

Court convened pursuant to adjournment;

All parties present.

The Court: You may proceed. Captain Obert will resume the stand.

PETER ALBERT OBERT

resumed the stand for further examination.

Further Cross Examination

By Mr. Ryan:

Q. What was the practice and custom of the Alaska Steamship Company in May, 1935, with respect to the frequency of adjusting compasses on vessels in the Alaska trade?

The Court: If you know.

Q. (By Mr. Ryan) If you know.

A. To have them adjusted if you noticed anything wrong. If the master finds anything wrong with the compass, to have it adjusted.

Q. What, in your opinion, as an experienced master mariner, was safe practice with respect to the frequency of adjusting compasses on vessels in the Alaska trade?

A. To have them adjusted if you found anything wrong.

Q. I am asking you about the frequency—the period of time involved. Within what period of time should compasses be adjusted on vessels in the

(Testimony of Peter Albert Obert.)

Alaska trade, in your opinion as an experienced master mariner?

A. Well, at any time in two, three, four or five years, if [2020] there is anything wrong.

Q. Now, on August 2, 1935, in the United States Attorneys' office in Seattle, in the presence of the Assistant United States Attorney Pellegrini, and Ben F. Nelson, and the other persons I have described to you in previous questions today and yesterday, did you or did you not make the following statement after first being first duly sworn to tell the whole truth?

Mr. Bogle: What page?

Mr. Ryan: Pages 41 and 42.

Q. (By Mr. Ryan) This is with reference to deviation cards for compasses.

“Q. That is the usual practice, to have those cards made about every year on every ship, isn't it?

A. Well, sometimes you adjust them twice.

Q. Twice a year?

A. That is if something goes wrong.

Q. Naval vessels adjust them about twenty times a year.

A. That is all they have to do just about all the time.

Q. In merchant vessels it is once or twice a year?

A. Once a year.

(Testimony of Peter Albert Obert.)

Q. To let it go you think is just taking chances?

A. Yes”.

Did you or did you not so state under oath at that time?

A. If there is anything wrong——

Q. (Interposing) Answer that question, please. Did you [2021] or did you not answer it in that way—did you or did you not so state under oath at that time?

A. If there is anything wrong with the compasses, have them adjusted.

The Court: The question is, did you say what he said was said at that time?

The Witness: I don't think that I did, Your Honor.

Q. (By Mr. Ryan) What is your answer?

A. I don't think that I did.

Q. You deny it, is that it?

(Witness does not answer)

Q. Do you say that the answers which you purport to give, as shown in what I have read to you, are false in fact, is that right?

A. I said that if anything was wrong—if you found anything wrong with the compasses——

Q. (Interposing) Oh, no. Just answer the question. Do you say that the answers that you gave there, if you gave the answers that you gave there——

(Testimony of Peter Albert Obert.)

A. (Interposing) I don't remember half of the answers that I gave there.

Q. Well, will you say yes or no to that. Will you say that this was false that you said there?

A. I don't remember.

Q. I say, do you say—

A. (Interposing) I don't remember.

Mr. Bogle: I do not think that he understands the question, Mr. Ryan.

Q. (By Mr. Ryan) Do you state—what is the fact— [2022] now, I will ask you this individually.

“Q. That is the usual practice to have these cards made about every year on every ship, isn't it?”

And you then said under oath,

“A. Well, sometimes you adjust them twice.

Q. Twice a year?

A. That is, if something goes wrong”.

A. Yes.

Q. Did you or did you not so testify?

A. Yes, I did.

Q. Under oath?

A. Certainly.

Q. All right. Now, did you further state under oath at that time and under those circumstances, in the United States District Attorney's office on August 2, 1935,

“Q. In merchant vessels it is once or twice a year?”

(Testimony of Peter Albert Obert.)

A. Once a year.

Q. To let it go you think is just taking a chance?

A. Yes."

Did you or did you not so state under oath at that time?

A. No, I don't think so. I don't remember making that statement.

Q. You don't remember making that statement?

A. No.

Q. Do you deny that you made that statement?

A. I don't remember that I made that statement.

Q. Do you deny that you made that statement?

[2023]

A. I say that I don't remember that I made it.

Q. All you say is that you don't remember it?

A. Yes.

Q. Is that it? You don't deny it?

A. I don't remember it.

Q. All right. We will take it in parts. Did you or did you not state under oath at the time and place, and to the persons that I have described, on August 2, 1935, in the United States Attorney's office here as follows:

"Q. In merchant vessels it is once or twice a year?

A. Once a year".

(Testimony of Peter Albert Obert.)

Did or did you not so testify or state under oath at that time?

A. I might have said, if there was something found that there was something wrong with it.

Q. Did you not give the answer to the question as I have stated it, and at the time and place that I have described to you?

(Witness does not answer)

Q. Do you deny that you said that?

A. Yes.

Q. You deny that?

Mr. Bogle: Well, he has said that. He has answered that.

Q. (By Mr. Ryan) And you say that that answer is false, is that it, in fact?

A. It is not right.

Q. It is what?

A. It is not right. [2024]

Q. It is not right?

A. And that is why I would not sign that thing. There are a good many things in there that are wrong.

Q. I will ask you now, in merchant vessels what is the usual practice with reference to having deviation cards drawn up with references to compasses—with reference to the frequency of drawing up deviation cards? What is the usual practice on merchant vessels?

A. To have them posted up.

Q. Yes. And how frequently is that adjusting and drawing up of those deviation cards done ac-

(Testimony of Peter Albert Obert.)

According to the usual practice on merchant vessels?

A. Any time that it is necessary to have a compass adjuster to put the cards up.

Q. Every year or not?

A. If necessary, yes.

Q. Yes.

A. If there is found to be something wrong with the compass, to have it adjusted.

Q. Well, how often? What is that usual practice? How often is that done? How often is that considered necessary under usual practice on merchant vessels with reference to adjusting compasses?

A. Yes.

Q. Well, how often?

A. It is the practice to have it adjusted if there is anything found wrong.

Q. Yes, but how often is it found necessary under usual practice to have adjustment made of compasses on [2025] merchant vessels?

A. Well, every year, or every other year, or every two years—anything that is necessary when something is found wrong with them.

Q. When were the compasses—well, I will strike that. What is the usual course of vessels sailing Seattle to Metakatla, Alaska?

A. Well, there are a good many courses; a good many ways to go.

Q. Well, the usual route, I am asking you. What is the usual route of vessels sailing from Seattle to Metakatla?

(Testimony of Peter Albert Obert.)

A. Most of the passenger ships take the inside route.

Q. About 90% of them go up the inside passage, don't they?

A. I would not say that.

Q. Sailing from Seattle to Metakatla.

A. I would not say that.

Q. What?

A. I would not say that.

Q. Did you or did you not state under oath on August 2, 1935, in the United States Attorney's office in Seattle, to the persons and under the circumstances that I have described to you before today, as follows—

Mr. Long: (Interposing) What page?

Mr. Ryan: Page 39.

Q.

“Q. What is the usual course from Seattle up to Metakatla?

A. There is actually a lot of courses. The usual route?

Q. Yes. The usual route is the outside or the [2026] inside?

A. The shortest is the outside.

Q. What is the usual route?

A. Most of them go the inside.

Q. About 90% of them go up inside?

A. Yes, I think they do”.

Did you or did you not so state under oath?

A. Yes, sir.

(Testimony of Peter Albert Obert.)

Mr. Long: Will you read the next question and answer?

Mr. Ryan: That is all, Your Honor.

The Court: Is there any redirect? If you wish to read some other part of that record in that connection and want to call his attention to it at the present time, you may do so.

Mr. Bogle: Yes, Your Honor, I do.

Redirect Examination

By Mr. Bogle:

Q. Captain, how many times did you testify in connection with the loss of the "Denali" before the United States Local Inspectors at Seattle?

A. Once.

Q. Did you testify on the investigation of this loss?

A. Yes, sir.

Q. Were you subsequently charged with negligence?

A. Yes, sir.

Q. Did you testify on your trial?

The Court: On that question? [2027]

Q. (By Mr. Bogle) Did you testify on your trial before the Inspectors?

A. Yes, sir, I testified on the trial before the Inspectors.

Q. So how many times did you appear before them?

A. Just once.

(Testimony of Peter Albert Obert.)

Q. Didn't you appear at your trial?

(Witness does not answer)

Q. I say, didn't you appear at the time of the trial?

A. Yes, sir, certainly.

Q. Didn't you testify in the investigation before the trial?

A. Before the Inspectors?

Q. Yes.

(Witness does not answer)

Q. Do you understand what I am asking you, Captain?

A. No, I don't remember that.

Q. Did you testify in the matter of the investigation of the loss of the Steamer "Denali" before the United States Inspectors on May 24, 1935?

A. Yes.

Q. I will ask you if on that investigation you testified as follows:

"Q. Was there a deviation book on the 'Denali'?

A. Yes, sir.

Q. Did you look at the deviation book?

A. Yes, sir.

Q. Did it seem to be kept in a proper, ship-shape manner?

A. Absolutely."

Did you so testify? [2028]

A. Yes, sir.

Q. Is that testimony true?

A. Yes, sir.

(Testimony of Peter Albert Obert.)

Q. At the same hearing, Captain, did you testify as follows:—

Mr. Ryan: (Interposing) Would you mind giving me the page?

Mr. Bogle: This is page 3 of my own copy, Mr. Ryan.

Q. (By Mr. Bogle) Captain, at the same hearing, did you testify as follows:

“Q. As a matter of fact you never noticed any distinctive change in your compass?

A. No, sir”.

Did you so testify?

A. Yes, sir.

Q. And at the same investigation did you give the following testimony,

“Q. Prior to the vessel striking did the man on the lookout make any outcry?”

Mr. Summers: Please do not answer this question, Captain, before we have a chance to object.

Q. (By Mr. Bogle) And did you answer,

“A. No, he did have a light—Tree Point Light.

Q. How did it bear?”

Mr. Summers: No, I object to that—

Mr. Bogle: (Interposing) Just wait until I get through.

Q. (By Mr. Bogle)

“Q. How did it bear?

A. About a point, or a point and a [2029] quarter or a point and a half on the port bow”.

(Testimony of Peter Albert Obert.)

Now, did you so testify at that time and place?

Mr. Summers: I object to that, if the Court please, because counsel is limited on his redirect with reference to this testimony to matters which are purely explanatory with respect to which on cross examination an attempt was made to impeach him on similar testimony.

The Court: Do you recall whether this was touched upon on cross examination?

Mr. Bogle: Yes. Part of the same thing was read to him on cross, and in explanation of what his testimony was then I have a right to read the rest of it and ask him if that was his testimony. In other words, I am merely stating more than what was testified to or what was mentioned on cross examination.

The Court: It seems to me that there was something said about a light that was read yesterday from the excerpt of his testimony.

Mr. Bogle: Yes.

The Court: But I do not recall about an outcry. However, the objection is overruled.

Mr. Summers: My point simply is this, that so far as I recall it, at least there was nothing read to this witness from the testimony before the Inspectors with reference to these lights. In other words, there was cross examination as to when he saw certain lights, but not by way of impeachment from this testimony. [2030]

The Court: Objection overruled.

(Testimony of Peter Albert Obert.)

Mr. Bogle: Did he answer that?

The Reporter: No.

Q. (By Mr. Bogle) Did you so testify before the Inspectors?

A. Yes, sir.

Mr. Ryan: Just one moment, please. I would ask Your Honor's indulgence. There was just one question that I intended to ask the witness. Just one short question.

The Court: Would you permit that, Mr. Bogle?

Mr. Bogle: Yes.

The Court: So that your redirect can be responsive to that?

Mr. Bogle: Yes, sir, I would be glad to do that.

Further Cross Examination

By Mr. Ryan:

Q. On August 2nd, 1935, in the United States Attorney's office in Seattle, did you or did you not state under oath—

The Court: (Interposing) What page—

Q. (Continuing) to the persons,—

The Court: (Interposing) What page?

Mr. Ryan: Pages 33 and 34.

Q. (Continuing)—to the persons that I have described to you, the Assistant United States Attorney Pellegrini, and Ben F. Nelson, as follows:

“Q. Suppose she had not been laid up at all, [2031] how often, in your opinion, should the compasses be adjusted?

(Testimony of Peter Albert Obert.)

A. Once a year.

Q. Once a year?

A. Yes."

Did you or did you not so state under oath?

Mr. Bogle: Wait a minute. I want to object to that.

A. Well, it is the same thing. If you found anything wrong with the compasses you have them adjusted.

Q. Did you or did you not state under oath as I have read it to you—did you or did you not state under oath at that time as I have read it to you?

A. I don't think that that is correct.

Q. What?

A. I don't think that that is correct.

Q. Do you deny——

A. (Interposing) Yes.

Q. (Continuing) ——that you so stated under oath?

A. Yes, sir.

Q. You deny it?

A. Yes, sir.

Mr. Ryan: That is all.

The Court: Does that finish your further cross?

Mr. Ryan: Yes, Your Honor. Thank you very much.

Redirect Examination (Continued)

By Mr. Bogle:

Q. Well, picking up that very point there, Captain, I will ask you if the statement which has been

(Testimony of Peter Albert Obert.)

read to you is [2032] in fact true or untrue?

A. I didn't quite understand that.

The Court: I think you had better read it again so that he can have it clearly in his mind.

Q. (By Mr. Bogle) This statement,

“Suppose she had not been laid up at all, how often in your opinion should the compasses be adjusted?”

A. Once a year”.

If you gave that testimony, or made that statement, is that true or untrue?

A. It is not true.

Q. Now, Captain—did you—did you in your trial before the United States Inspectors give the following testimony:

“Q. In taking bearings, laying out courses and in taking the course, tide, and current with the utmost care there is still an item of uncertainty?”

A. There is bound to be”.

Did you give that testimony before the United States Inspectors upon your trial?

A. Read it over again, please; I didn't get it.

Q.

“Q. In taking bearings, laying out courses and in taking the course, tide, and currents with the utmost care there is still an item of uncertainty”.

(Testimony of Peter Albert Obert.)

That was the question. And the answer was,
“A. There is bound to be”.

A. Yes.

Q. And I will ask you if in the course of your trial before the Inspectors you gave the following testimony: [2033]

“Q. You hauled the ship off to starboard to avoid getting too close to that reef?

A. To get over to the starboard shore, yes, sir.

Q. Whether you entered the course in the book or not, would it change the fact that you actually did haul her off, the absence of an entry in the log book had nothing to do with the disaster?

A. I wouldn't think so, it would be in my favor on account of the current”.

Did you give that testimony?

A. Yes, sir.

Q. Now, Captain, how many times did you appear in Mr. Pellegrini's office or in the office of the Assistant United States Attorney in this building in Seattle?

A. How many times?

Q. Yes.

A. Just once.

Q. When was the first time you ever met Mr. Pellegrini?

A. I never met him before that time—before

(Testimony of Peter Albert Obert.)

that time that I was up there, but when that time was, I don't remember the date.

Q. You never met him before this time that this statement was taken?

A. No, sir. That is the first time that I met him.

Q. Had you or had you not previously given him a statement in connection with the "Denali"?

A. I never heard of it.

Q. Captain, what are the circumstances under which you [2034] appeared in the office of the Assistant United States Attorney on the occasion referred to by Mr. Ryan?

A. Well, I was at home at work, and they called me up—Mr. Pellegrini called me up from the United States District Attorney's office. [2035]

Q. Did he tell you who he was?

Mr. Summers: Do not lead him.

Mr. Ryan: Let the witness state. I ask that the witness be allowed to answer that.

Mr. Bogle: I thought he had.

Mr. Ryan: No. I think you interrupted him.

Mr. Bogle: Will you read the question? (Question read as follows:

"Q. What are the circumstances under which you appeared in the office of the Assistant United States Attorney on the occasion referred to by Mr. Ryan?")

(Testimony of Peter Albert Obert.)

Q. (By Mr. Bogle) What was your answer?

A. Well, I was at home at work and they called me up, Mr. Pellegrini called me up from the United States Attorney's office.

The Court: Is there anything else you wanted to add, as to how it occurred, in answer to that question?

The Witness: Well, yes. They asked me if I could come down to the office, and I said "No, I cannot, because I am doing a little work." Well, they said "It is absolutely necessary that you do come down here. We will send for you."

Q. They would what?

A. They would send for me. Well, I commenced thinking—I thought to myself I had better go down. I didn't know what was up. So they said "We will send a taxi for you", and I said, "All right, I will come down." They asked me how long it would take, and I said about half an hour. So I went upstairs and changed my clothes, and when I [2036] came down the taxi was there and took me down to the office there, and Mr. Ryan, Mr. Pellegrini—

Q. (Interposing) The taxi brought you to what office?

A. Down here to the attorney's office.

Q. Did you pay the taxi man?

A. No, sir.

Mr. Ryan: Let him go on and state, and do not interrupt him.

(Testimony of Peter Albert Obert.)

Mr. Bogle: I think I should be entitled to examine the witness.

The Court: The objection is overruled.

Mr. Bogle: I am trying to get the story out.

Q. (By Mr. Bogle) Then you went up to what room, do you remember?

A. It was the United States Attorney's office. I don't know what room it was.

Q. It was in this building we are in now?

A. Yes.

Q. Who did you find there?

A. Mr. Pellegrini, Mr. Ryan, Mr. Stedman, and a couple more that I don't know who they were.

Q. Did anyone tell you the purpose of calling you to that office?

A. Not until I came down there.

Q. And then what did they tell you?

A. They wanted to get some statement in regard to the stranding of the "Denali".

Q. Did Mr. Pellegrini or any one tell you who Mr. Ryan was representing?

A. No, sir. [2037]

Q. Did they tell you he was or was not a United States Attorney?

A. Well, yes.

Q. What did they tell you?

A. Well, they didn't say much about that.

Q. What did they say, Captain?

A. They said he was an Assistant United States Attorney.

(Testimony of Peter Albert Obert.)

Q. Mr. Ryan?

A. No; Mr. Pellegrini.

Q. I say, did they tell you who Mr. Ryan was?

A. No, sir.

Q. Captain, at the time you went up there was your license in effect or had it been suspended?

A. Suspended.

Q. Did you tell the gentlemen that?

A. No, sir.

Q. Did they inquire of you as to whether you were still employed by the Alaska Steamship Company?

A. I don't remember that.

Q. Now, Captain, at the time of making that statement was anything said to you to indicate to you the purpose of the statement? In other words, whether it affected a suit or whether it affected you, personally?

A. No, sir.

Q. What was your own judgment from the circumstances?

A. I didn't really know what was going to happen.

Q. Did you think it was affecting your license?

Mr. Summers: That is leading.

The Witness: Yes.

Mr. Summers: He has already said he didn't know. [2038]

The Court: Objection overruled.

Q. (By Mr. Bogle) Then, Captain, do you re-

(Testimony of Peter Albert Obert.)

member what time of day this was, morning or afternoon?

A. I think it was in the afternoon, if I remember right.

Q. Captain, who conducted most of the examination?

A. Mr. Ryan.

Q. The transcript shows about two and one-half pages, or three and one-half pages by Mr. Pellegrini, and some fifty odd pages by Mr. Ryan.

A. Yes, sir.

Q. Was there anyone asking questions besides Mr. Ryan?

A. Mr. Pellegrini.

Q. Did Mr. Stedman ask any questions?

A. I don't remember that.

Q. Now, Captain, I notice in this transcript you were asked a great many times whether you had a conversation with Capt. Healy.

A. Yes, sir.

Q. I will ask you to state, to the best of your recollection, whether, in fact, you had any conversation with Capt. Healy, and if so when and the substance of the conversation.

Mr. Ryan: Just a minute; this witness was examined fully and asked about what the fact was, what his recollection was, and all that sort of thing, on that very point, and the testimony is in the record.

Mr. Bogle: That was on cross examination.

(Testimony of Peter Albert Obert.)

The Court: The last that occurred on it was in cross examination, about some conversation.

Mr. Ryan: And off Victoria. [2039]

The Court: Off Victoria.

Mr. Ryan: Yes, Your Honor.

The Court: That was with Capt. Healy.

Mr. Bogle: That was in cross examination, Your Honor.

The Court: Yes. Objection overruled.

Mr. Bogle: I ask that the question be read.

(Question read as follows:

“Q. I will ask you to state, to the best of your recollection, whether, in fact, you had any conversation with Capt. Healy, and if so when and the substance of the conversation.”)

The Witness: Well, this time, this afternoon, I didn't have much of a conversation. When we came in there was general conversation up there, and I asked him about the card; I said, “You have the old cards”, and he said “Yes”. Outside of that there was nothing more said, only everything in general, the course of the ship, or something like that, or the weather.

Q. (By Mr. Bogle) Was that statement made by you as a criticism?

Mr. Summers: That is objected to as leading.

Mr. Ryan: Yes; I object to that as leading. I mean I really do.

The Witness: No, sir.

(Testimony of Peter Albert Obert.)

The Court: It is leading. Try to avoid leading as much as you can, or at least exhaust his recollection in some other manner.

Mr. Bogle: Well, I will withdraw the question. It is pretty hard to do that.

The Court: I do realize that situation, but at least [2040] exhaust his recollection first.

Q. (By Mr. Bogle) I will ask you if at that time and place this question was asked you:

“Q. Whose duty was it to ask the company to adjust the compass?

A. The Captain should have done that.”

Did you give that testimony?

A. Yes, sir.

Q. I will ask you if this statement was made there, page 8:

“Q. There was no compass adjuster on board at any time?

A. No.

Q. Had you any means on board of adjusting the compass?

A. Sure.

Q. What do you mean by that?

A. We had the instruments to get the sun-down and get the bearings, and take an azimuth.”

Did you make that statement?

A. Yes.

Q. Is that a true statement?

(Testimony of Peter Albert Obert.)

A. Yes, sir.

Q. Now, Captain, in connection with this question that was asked you as to the custom with reference to making compass adjustments, has your entire experience of 39 years been in Alaska waters?

A. Yes, sir.

Q. And what other companies have you been working for during that time, other than the Alaska Steamship Company? [2041]

Mr. Summers: That has been already covered.

The Court: Yes. That objection is sustained.

Q. In your experience I will ask you if it was the custom of any company that you have ever worked for in those 39 years that you have operated in Alaska waters, for the company to order an adjustment of the compass at any time, except upon the request of the master?

Mr. Ryan: That is objected to.

The Witness: No, sir.

Mr. Ryan: That is objected to as leading, and, second, it is not proper redirect. It was covered on direct examination.

The Court: Objection overruled.

Q. What is your answer, Captain?

A. No, sir.

Q. I will ask you whether you know of any other company operating vessels out of Seattle—now, whether you know of your own knowledge—operating vessels out of Seattle, whether there was any

(Testimony of Peter Albert Obert.)

custom of the company adjusting the compasses at any periodic time, or at any time, other than upon the request of the master?

A. No, sir.

Mr. Ryan: Just a minute; that is objected to on the ground, first, that he should be asked whether there is such a practice of other companies here, and, second, if he knows what it is, the practice of the other companies.

Mr. Bogle: I have asked him if he knows.

The Court: The question is leading, and I do think the objection is proper, and it is sustained. You can [2042] lay the foundation, Mr. Bogle, by asking him certain questions.

Q. (By Mr. Bogle) Do you know the custom in Seattle harbor, other than on the vessels you have worked on, with reference to adjusting compasses?

A. Well, anyone has a compass adjusted if it is necessary, if the master of a ship, any ship——

Q. (Interposing) Wait a minute. First, I asked you if you knew what the custom was of other companies operating vessels out of Seattle, other than the companies you have worked for?

A. I don't know of anything.

Q. I do not quite understand you.

The Court: No; he anticipates, and it is pretty hard to get—well, proceed. You can repeat the question. (Last question read.)

Q. (Continuing) With reference to adjusting compasses.

(Testimony of Peter Albert Obert.)

The Court: Do you know it or don't you?

The Witness: No, I don't.

Q. (By Mr. Bogle) You do not know that?

A. No.

The Court: You can ask him if he knows what the custom is of other companies, other than the Alaska Steamship Company.

Mr. Bogle: That is the question I just asked him.

Mr. Ryan: And he said he didn't know.

The Court: I think you will find the record not so.

Mr. Ryan: May I ask that the last question and answer be read?

The Court: They may be read. (Record read as follows: [2043])

“Q. First, I asked you if you knew what the custom was of other companies operating vessels out of Seattle, other than the companies you have worked for?

A. I don't know of anything.”)

The Court: Now, then, in that connection he has not stated what the custom was, or whether he knew of the custom of companies other than the Alaska Steamship Company, and I think you may ask him that, if you wish.

Mr. Bogle: I think he has answered the question as to the Alaska Steamship Company.

The Court: I think so.

(Testimony of Peter Albert Obert.)

Q. (By Mr. Bogle) Do you know what the custom with reference to periodic adjustment of compasses was of companies other than the Alaska Steamship Company?

The Court: Operating in Alaska, or for Alaska.

The Witness: To have them adjusted.

Q. Do you know what the custom of the Alaska Steamship Company is?

A. Yes.

Q. Do you know what the custom of other companies is?

A. No.

The Court: Very well. That covers it.

Q. Now, Captain, I will ask you if in this statement before the United States Attorney, following the portion read to you by Mr. Ryan, you made the following statement, page 11, referring to compasses:

“Q. Because, if it is not adjusted, the ship having lain there with all the iron and steel and all this riveting going on, and then taking on a [2044] lot of iron on board, the deviation card would not be of much use, would it?”

A. No. But even if the compass was adjusted, and then you go and pile in boilers, machinery, engines and trucks, it throws it out again.”

Did you give that testimony?

A. I don't remember?

Q. Is that testimony correct, is it true?

(Testimony of Peter Albert Obert.)

A. No.

Q. In other words, if you had your compass adjusted and afterwards put on an iron cargo would your deviation cards be correct?

Mr. Ryan: Objected to on the grounds——

The Witness: (Interposing) No, sir.

Mr. Ryan: (Continuing) ——it tends to impeach his own witness.

The Court: Objection overruled.

Mr. Bogle: I will read it again:

“A. But even if the compass was adjusted, and then you go and pile in boilers, machinery, engines and trucks, it throws it out again.”

Mr. Ryan: Objected to on the ground that the witness has just testified fully on it, and it is a clear attempt to impeach his own witness, and it is repetition.

Mr. Bogle: It is not such an attempt. I have the right to ask the question, Mr. Ryan.

The Court: The only thought that occurs to the Court is the possibility of the witness—is whether or not the witness understood the question and answer previously read to him. That is the only thing. I think it may be [2045] repeated again upon that basis, to see whether or not he understood it. (Record read as follows:

“Q. In other words, if you had your compass adjusted and afterwards put on an iron cargo would your deviation cards be correct?

A. No, sir.”

(Testimony of Peter Albert Obert.)

The Witness: No, sir.

Q. (By Mr. Bogle) Captain, did you make this statement:

“Q. What, in your opinion, was the cause of the stranding?

A. The only thing I could not figure out was the current. There was an enormous current in the Passage.

Q. The force and direction of the water are quite well established, are they not?

A. You can never tell how much they run. The only ones who know the current are the fishermen who hang around. I would not know how it ran until the tide went down.”

Did you make that statement? Do you understand it, Captain?

A. Yes.

Q. Did you make that statement?

A. Yes.

Q. Is that statement correct?

A. Yes, sir.

Q. I will ask you if you made this statement, at the same time, page 26:

“Q. Was it very dark?

A. I could not see Zayas Island. I could not see her before 15 or 20 minutes before that.

[2046]

Q. Before what?

A. Before I got to the end of the island.

(Testimony of Peter Albert Obert.)

Q. At what time by the clock did you see Zayas Island first?

A. Well, I could not see the loom of it from five or six miles away. I might see it a little closer than that."

And again——

Mr. Ryan: (Interposing) How about reading the next question, as part of that same testimony?

Mr. Bogle: Well, that is a strange request, Your Honor.

The Court: Well each counsel can call the attention of the witness to any question or answer that they desire.

Mr. Bogle: I will read it:

"Q. At what time?

A. I don't know."

Then further down:

"Q. How many minutes before did you see it?

A. Well I don't know. I would not say. Maybe half to three-quarters of an hour before that. I could see the haze but not the plain land. It was kind of a peculiar night. It was like a mirage. I saw Dundas Island shortly after passing Triple Island prior to that time, and then she disappeared again.

Q. How many miles could you see at 2:30 a. m., May 19?

A. Maybe two or three miles.

(Testimony of Peter Albert Obert.)

Q. Do you think you could not see further than that? [2047]

A. Not plain. I could see the loom, but not plain."

Did you give that testimony?

A. Yes.

Q. Is that true?

A. Yes, sir.

Q. I will ask you if you made this statement, page 28:

"Q. Now, if the compass had been adjusted before the 'Denali' sailed, you would have known positively what the deviation was on all your headings?

A. Yes, sir.

Q. You would know it more positively than you knew it on the trip?

A. Not any better than we could take it ourselves. We could take an azimuth just like an adjuster."

Did you give that testimony?

A. Yes, sir.

Q. I will ask you if on page 30 you gave this testimony, and referring to your conversation with Capt. Healy:

"Q. Which way was she running, to the right or to the left, or both ways?

A. I don't remember. Of course, it was pretty high tide. You try to steer magnetic, and you have the tides to contend with."

(Testimony of Peter Albert Obert.)

Did you give that testimony?

A. To the Inspectors?

Q. No, no; in the United States Attorney's office here. Do you understand the question?

A. Read it again, please. (Question read.) I had no such conversation. [2048]

The Court: The question that counsel put to you was whether or not you testified as he read to you, at that time.

Q. Do you remember giving that statement?

A. No, sir.

Q. Did you have tides in the vicinity of Race Rocks?

A. There are always more or less tides.

Q. Did you on the afternoon of May 16th?

A. Yes, I believe I did. We had a strong flood tide, I believe.

Q. I will ask you if you gave this testimony—

Mr. Ryan: (Interposing) Where—at the Steamboat Inspectors'?

Mr. Bogle: I beg your pardon; not testimony, but a statement, in the United States Attorney's office, page 35:

“Q. There were a lot of reasons why the ‘Denali’ should have had her compass adjusted before sailing, isn't that right?

A. Yes, but it would not have been any good if she had been adjusted.

Q. Why not?

A. On account of the iron, because going back she would have more deviation.”

(Testimony of Peter Albert Obert.)

Did you make that statement?

The Witness: I don't quite get that.

The Court: Captain, it is not a question now whether that is true or not, but the question is whether or not you then stated that.

Mr. Bogle: Will you read it to him? Maybe he can [2049] get it clearer. (Last question read.)

Q. (By Mr. Bogle) Do you or do you not remember making that statement?

A. Yes; I think I did.

Q. And then this statement:

“Q. But after the iron was put on board, there was every reason in the world why the ship should be swung by the compass adjuster and the deviation determined before she sailed?

A. Yes, but they never do that.”

The Witness: No.

Q. (Continuing):

“Q. There was very strong reason for doing that in this case before sailing, isn't that right?

A. Maybe.

Q. Well, that is well known to every master mariner?

A. They don't do that. They do that when the ship is light, and when they put iron and steel on board, that changes it.

Q. That is what would happen?

A. That is what happened last year on the 'Tanana'.”

(Testimony of Peter Albert Obert.)

Did you give that statement, or do you remember?

A. Yes. We had the "Tanana" adjusted after that.

Q. Captain, shortly before the statement read to you by Mr. Ryan from the same transcript, the same document, page 39—

Mr. Ryan: (Interposing) Is this in the United States Attorney's office?

The Court: Yes; the same, on page 39.

Q. (By Mr. Bogle) In connection with the outside and the [2050] inside course, immediately following what he read, I will ask you if you made this statement:

"Q. What is the safer, the outside or the inside?"

A. It is just as safe on the outside."

A. I would say the safest; you get away from all the rocks and reefs.

The Court: That is sufficient. There is no question before you.

Q. Then on page 40 of the same document:

"Q. Then when you get up there, there are no lights, and then when you get in the Caamano Passage it is much more dangerous than the inside,—all you have is dead reckoning.

A. Dead reckoning wouldn't go very good.

Q. Dead reckoning isn't very accurate?

A. You have to see what you are doing."

(Testimony of Peter Albert Obert.)

Did you make that statement?

A. Certainly; you have to do piloting.

Q. I mean did you give that statement; answer yes or no.

A. I don't remember that.

Q. You do not remember?

A. I have gone over it so many times I don't remember half of it.

Q. Well, is that statement correct?

A. I don't know.

Q. I will ask this question, Captain; in navigating a passage such as Caamano Passage, do you rely solely upon your compass?

A. No, sir.

Q. What do you rely upon? [2051]

Mr. Summers: Just a moment; I object to that——

Mr. Ryan: I object to that as wholly leading.

Mr. Bogle: I do not see anything leading about it.

The Court: I think the Court can rule upon the admissibility of the evidence, but counsel should have an opportunity to state his objection.

Mr. Ryan: I object to the question on the ground that is wholly leading and suggestive, and I ask that the question be read.

Mr. Summers: And it is not redirect, either, Your Honor. It was covered on direct.

The Court: It has been covered a number of times, and on that basis the objection is sustained.

(Testimony of Peter Albert Obert.)

Mr. Bogle: If Your Honor please, it is to meet the very part of this transcript which they have already read in the record.

The Court: You have the transcript, Mr. Bogle, and you are now examining on redirect. The Court will give you an opportunity to submit to him the transcript again on that basis, that possibly he did not understand the question previously.

Mr. Bogle: Read the previous question and see if he understands it. (Record read as follows:

“Q. Then on page 40 of the same document:

‘Q. Then when you get up there, there are no lights, and then when you get in the Caamano Passage it is much more dangerous than the inside,—all you have is dead reckoning.

A. Dead reckoning wouldn’t go very good.

Q. Dead reckoning isn’t very accurate?

[2052]

A. You have to see what you are doing.’ ”

Q. (By Mr. Bogle) Did you or did you not make that statement, Captain?

A. Yes.

Q. Is that statement correct?

A. Yes.

Q. Page 49 of the same document:

“Q. When you take the outside passage, you have to rely on the compass more?

A. Sure.

(Testimony of Peter Albert Obert.)

Q. More dead reckoning?

A. There are a lot of times you don't bother about the course. You line her up in the mid-channel. Of course you can't keep the course on account of the current, and we have to change now and then."

Mr. Ryan: I cannot find that. Was that before the Inspectors or in the United States Attorney's office? I cannot find it.

Mr. Bogle: Well, if the Court please——

The Court: Counsel's question is in good faith. Can you advise counsel where it is?

Mr. Bogle: I told him that it was page 49 of the same document. Read the question. (Last question read.)

Q. (By Mr. Bogle) Did you make that statement?

A. Yes.

Q. Is that statement true?

A. Yes, sir. [2053]

Q. Captain, when you finished these proceedings and Mr. Ryan had completed his questioning, just tell us what happened.

The Court: Where?

Q. (By Mr. Bogle) In the same proceeding, in the United States Attorney's office, when Mr. Ryan had completed his interrogation, just tell us what happened then.

A. You mean after I was through there?

(Testimony of Peter Albert Obert.)

Q. Yes, that is right.

Mr. Summers: If Your Honor please——

A. (Interposing) Well, there is nothing happened excepting——

Mr. Summers: (Interposing) Now, if Your Honor please——

The Court: He says that nothing happened. Now, you may make your objection.

Mr. Summers: I want to make this objection. This witness had admitted and denied various statements read by Mr. Ryan and Mr. Bogle. He now is asked to recite what happened after that. It is apparent that he did make a statement of some sort. I object to what happened after making the statement as being entirely irrelevant, incompetent and not rebuttal or proper redirect examination.

The Court: I am going to hear it, and if I think it is not material I will entertain a motion to strike it.

Mr. Bogle: What was the question?

(Questions read as follows; and answer read as follows: [2054]

“Q. Captain, when you finished these proceedings and Mr. Ryan had completed his questioning, just tell us what happened; in the same proceeding, in the United States Attorney’s office when Mr. Ryan had completed his interrogation, just tell us what happened then.

A. Well, there is nothing happened excepting——”)

(Testimony of Peter Albert Obert.)

The Court: He said, "there is nothing happened excepting". Now, finish your answer if you have not finished your answer.

A. Well, I was asked how much money I had earned, or what it was. I was offered pay for it.

The Court: You were offered pay for the time coming down to the United States Attorney's office?

A. Yes, sir.

Q. (By Mr. Bogle) Then you left?

A. Not that I expected any pay.

Q. Then you left?

A. Yes, sir.

Q. Did you ever go back?

A. No, sir.

Q. How long after that, Captain, was it before this written transcript was presented to you by Mr. Nelson?

A. I believe it was the next day.

Mr. Summers: I object to that as not proper rebuttal, or redirect examination, rather, and on the ground that it is irrelevant and immaterial.

The Court: Objection overruled.

A. I think it was the next day, if I remember right. [2055]

Q. And did you at that time read the transcript?

(Witness does not answer)

Q. Did you sign it?

A. I don't remember the date that it was presented to me.

Q. Did you sign it?

(Testimony of Peter Albert Obert.)

A. No, sir.

Q. Were you requested by Mr. Nelson to sign it?

A. Yes, sir.

Q. Why didn't you sign it?

A. Well, because there was quite a few items in there that I didn't remember that I testified to.

Q. Were there any items in there that were not true?

A. Yes, sir.

Q. Did you so advise Mr. Nelson?

A. Well, he was there, and I told him.

Q. Did you ever sign it?

A. No, sir, I never signed it.

Q. Now, Captain, have you had any experience of your own in this body of water from a point abeam of Triple Island through Caamano Passage?

The Court: Before the occasion of this stranding?

Mr. Bogle: Well, before or since.

The Court: All right.

Q. (By Mr. Bogle) Before or since.

A. Yes, sir. Before and after.

Q. What has been your personal experience? I will strike that. During your thirty-nine years of experience in Alaska, have you been through these waters prior to the trip on the "Denali"?

A. Yes, sir. [2056]

Mr. Ryan: I object to that on the ground that it is not proper redirect. It has been gone over and over again on direct examination.

A. Many times.

(Testimony of Peter Albert Obert.)

The Court: Are you leading up to the purpose and intention of inquiring on redirect examination touching the effect of those currents, or something else about those currents?

Mr. Bogle: Your Honor, counsel asked him questions to the effect that he should have accepted this chart as gospel. I think I am entitled to show, which I did not show on direct, that he had personal experience here, as a result of which he knows that the currents are not accurate or regular.

The Court: Do you wish to state your objection?

Mr. Ryan: I object to that as not proper redirect. This man was asked questions about currents and about that passage on direct examination. He was asked about this chart and a lot of general questions about the whole subject. Now, this just is not proper redirect examination and I do not see why the case should be re-opened for that purpose to allow him to testify to that.

Mr. Summers: And I want to make the objection upon the further ground that that is at a time and at a location not material to the inquiry in issue here.

The Court: The objection is overruled.

Mr. Summers: Exception.

The Court: Exception allowed.

Mr. Bogle: Will you read the question?

(Question and answer read as follows: [2057])

“Q. During your thirty-nine years of experience in Alaska, had you been through these waters prior to the trip on the ‘Denali’?”

A. Yes, sir.”)

(Testimony of Peter Albert Obert.)

Q. (By Mr. Bogle) Of your own personal knowledge and experience on previous trips do you know whether or not the currents are regular as to time and regular as to force——

A. (Interposing) Quite irregular.

Mr. Summers: Just a minute, Your Honor. I object to that as not proper redirect examination.

The Court: Objection overruled.

Mr. Ryan: We make the same objection that we made heretofore.

The Court: Yes.

Mr. Ryan: And on the same grounds as stated heretofore.

The Court: Yes, objection overruled.

Mr. Ryan: May we have that objection on the same grounds go to the whole line of this examination?

The Court: Yes. The objection will be overruled.

Q. (By Mr. Bogle) Captain, from your personal experience is there any current coming through Brown's Passage?

A. There is a strong current coming out of Brown's Passage at ebb tide.

Q. And what is the general direction of that current?

A. Southwest—west to southwest.

Q. Captain, have you had any experience with another vessel recently, indicating the condition and the force of the [2058] currents in these waters between Triple Island and Caamano Passage?

(Testimony of Peter Albert Obert.)

A. Well, I have been up and down there this summer about five or six times.

Q. Were you there——

A. (Interposing) —and it was the same way, coming both ways.

Q. Were you there on a vessel on ebb tide?

A. Yes, sir.

Q. What vessel was that?

A. The “Mt. McKinley”.

Q. And what type of vessel is that?

A. Well, she is rather a big ship.

Mr. Ryan: What ship was that, Your Honor?

The Court: The “Mt. McKinley”.

Q. (By Mr. Bogle) What speed?

A. 14 knots average speed.

Q. Well, what was your experience with that vessel in these same waters as indicating the direction and irregularity of the tide?

A. Just this one trip this summer we came up Hecate Straits there and we were eleven miles off of Triple Island and we had her in mid-channel after we got the Triple Island Light abeam—had her up there, and put her on the track——

Q. (Interposing) What track was that?

A. I don't remember what track we steered. About North by West.

The Court: Mr. Bogle, I am not satisfied that this testimony about one collateral specific sailing is proper. [2059]

Mr. Bogle: I think it is.

(Testimony of Peter Albert Obert.)

The Court: Now, this is after, is it not?

Mr. Bogle: Yes.

The Court: Of course, I realize that it may be possible that an experience after may be pertinent to show that conditions were the same or similar at the time in question here. But if you took the converse of that and tried to show that it was changed since, I am sure that that would not be allowed and would be objectionable. I am going to sustain the objection as to this question with reference to a specific sailing. He can tell what he has gained from his experience touching the regularity or irregularity of these currents, however.

Mr. Bogle: In order to preserve the record, may I make an offer of proof?

The Court: Yes.

Mr. Bogle: I offer to prove by this witness that this summer on an ebb tide, similar to the one on the night of the "Denali" stranding, taking his departure from off Triple Island, setting his course for mid-channel, the ebb current, on a 14 knot boat after they had covered a distance of eleven miles on that course, set her over so that she was headed to the westward of Zayas Island, showing the strength of that current, and they had to bring her back three points to the right to get her into the channel. I just want to complete the record by making that offer.

The Court: The petitioner's offer to produce the proof, just stated is denied by the Court. [2060]

(Testimony of Peter Albert Obert.)

Mr. Long: Exception, Your Honor.

The Court: Exception allowed.

Mr. Long: It is understood that the proof would be introduced by the witness now on the stand and now sworn, is it?

The Court: Yes.

Mr. Long: That this all goes to this witness' testimony?

The Court: Yes.

Mr. Long: Exception.

The Court: Exception allowed.

Q. (By Mr. Bogle) Captain——

Mr. Ryan: (Interposing) Of course, that was an offer of proof, and I would like to add to my remarks or objection that on the statement of counsel the circumstances have not been proved to be sufficiently similar to those of the "Denali" on this voyage to be material, and on the further ground that it has not been shown that this witness' position on the vessel at the time was such that he would in the ordinary course acquire this information as part of his duties, or that he used any proper or sufficient instruments or methods with which to ascertain any of the substantial part of the fact with which the supposed inference is being sought to be drawn from him.

Mr. Bogle: Well, I would amend the offer to state that I would prove that he was pilot on this vessel and occupied the same position on it as he did on the "Denali"; that it was ebb tide; that the physi-

(Testimony of Peter Albert Obert.)

cal conditions were substantially the same except that it was [2061] day time instead of night.

The Court: As I understand it the "Mt. McKinley" was proceeding at about 14 knots per hour?

Mr. Bogle: Yes.

The Court: That is part of your proof?

Mr. Bogle: Yes. And I will also offer to prove that under that speed the tide would have much less effect on it than she would at nine miles an hour.

The Court: The ruling of the Court is supplemented after the objections are supplemented, the Court ruling that the offer of proof is denied.

Mr. Long: Exception, please.

The Court: Exception allowed.

Q. (By Mr. Bogle) Now, Captain—

The Court: (Interposing) That, however, Mr. Bogle, does not prevent you—well, strike that out. You may proceed.

Q. (By Mr. Bogle) Captain, when did you make your first change of course to the right with reference to the time when you could first see the loom of Zayas Island and Dundas Island?

Mr. Ryan: I object to that on the ground that that was certainly gone into on direct, and that it is not proper redirect.

The Court: Objection to the question is sustained.

Q. (By Mr. Bogle) Captain, in your experience as a pilot in Alaska waters is or is it not customary to enter in the log book just when you are piloting in restricted waters?

(Testimony of Peter Albert Obert.)

Mr. Ryan: That is objected to on the ground that that was gone into on direct. The witness was shown the [2062] log book and the practice and all that sort of thing gone into.

Mr. Bogle: No, Your Honor.

The Court: If it was gone into, I desire to hear his statement upon it again. The objection is overruled.

Mr. Bogle: Read the question.

(Question read as follows:

“Captain, in your experience as a pilot in Alaska waters is or is it not customary to enter in the log book just when you are piloting in restricted waters?”)

A. No.

Mr. Ryan: I am objecting further on the ground——

The Witness: (Interposing) No, sir.

Mr. Ryan: (Continuing) —that the conditions that they ask about are not similar to this under which the “Denali” was navigating on this night of the stranding. He has not been asked to assume that it was dark and hazy, and the other conditions, that are obviously relevant to any answer to that question.

Mr. Bogle: I will amplify it a little, then.

Q. (By Mr. Bogle) Captain, in navigating the inside passage of Alaska, say from Seattle to Juneau, about how often would you go through pas-

(Testimony of Peter Albert Obert.)

sages of the width or less than the width of Caamano Passage?

Mr. Ryan: That is objected to on the ground that what is done in the inside passage has no relevancy, in view of the undisputed testimony here that this vessel was in the outside passage.

Mr. Bogle: I am trying to get the practice now. [2063] Do you object to it because——

The Court: (Interposing) The objection is overruled.

Mr. Bogle: Read the question.

(Question read as follows:

“Captain, in navigating the inside passage of Alaska, say from Seattle to Juneau, about how often would you go through passages of the width or less than the width of Caamano Passage?”)

A. That is what we are going through nearly all the time.

Q. (By Mr. Bogle) Well, is it—the inside passage——

A. (Interposing) Very narrow channels.

Q. Is it a matter—is that piloting or navigating by dead reckoning on the inside passage?

A. Piloting, running by local knowledge of the channels.

Q. Then I asked a question that in navigating, where you are piloting rather than navigating by dead reckoning, when you make changes and rectify

(Testimony of Peter Albert Obert.)

your course and your position, is it customary to put those in your log book?

A. No, sir, if you did you would have your log book full of changes.

Q. About how many courses would you take, Captain, on the inside passage, piloting from Seattle to Juneau?

Mr. Ryan: I object to that as going too far afield.

The Witness: About 800 or 900 courses.

Mr. Ryan: This vessel was never at any time in the inside passage on this voyage.

The Court: The objection is sustained to that and [2064] the question and answer are stricken.

Q. (By Mr. Bogle) Captain, after the stranding of the "Denali" could you see the current alongside the stranded vessel?

A. Yes, sir.

Q. What would you say as to the strength of that current——

Mr. Ryan: (Interposing) That is objected to.

Q. (Continuing) —at that time.

Mr. Ryan: That is objected to on the ground that that obviously calls for speculation or guess by the witness. All that he has asked and assumed is that he looked over the side at the surface of the water.

Mr. Bogle: That is not all of it.

Mr. Ryan: That is not any basis upon which any inference could be drawn that would be of any assistance to the Court in this matter.

Mr. Long: What is your objection?

(Testimony of Peter Albert Obert.)

The Court: Objection overruled.

Mr. Bogle: Read the question.

(Question read as follows:

“What would you say as to the strength of that current at that time?”)

Mr. Summers: I object to that as not proper re-direct examination.

The Court: Objection overruled.

A. I would say three or four knots an hour in the middle of the tide there.

Mr. Summers: What was that answer?

(Answer read)

Q. (By Mr. Bogle) How soon after she stranded did you leave? [2065]

A. About a half an hour.

Mr. Summers: We object to that.

Mr. Bogle: This is merely preliminary.

The Court: I do not think anything preliminary is necessary. Just ask him the question that you have in mind.

Q. (By Mr. Bogle) How did you get from the vessel to the shore?

A. In the lifeboats.

The Court: I do not recall anything, Mr. Bogle, on cross that entitles you to examine him on re-direct on this.

Mr. Bogle: All right. I will withdraw the question. That is all.

(Testimony of Peter Albert Obert.)

Recross Examination

By Mr. Ryan:

Q. Counsel for the petitioner read to you from page 26 of your statement given under oath on August 2, 1935, in the United States Attorney's office about the time when you could see the loom of Zayas Island.

A. Yes, sir.

Q. Now, after the question and answer which he read you were you or were you not asked the following question and did you not give the following answer,

“Q. About what time?

A. I don't know that”.

Did you or did you not so testify? You were still under oath. [2066]

Mr. Bogle: Where is that in the transcript?

Mr. Ryan: That is on page 26.

Mr. Bogle: I object to that as not being proper recross examination.

Mr. Ryan: I am just giving the next question and answer after the interrogation that you made, Mr. Bogle.

Mr. Bogle: I read that.

Mr. Ryan: No, you didn't. You stopped right there.

Mr. Bogle: No, I did not.

The Court: Objection overruled.

Mr. Ryan: Yes, you did.

(Testimony of Peter Albert Obert.)

Mr. Bogle: I did not.

The Court: Objection overruled.

Q. (By Mr. Ryan) Did you or did you not so state under oath?

A. What was the question?

The Court: Read the question.

(Question read as follows:

“Now, after the question and answer which he read you were you or were you not asked the following question and did you not give the following answer,

‘Q. About what time?

A. I don’t know that’.

Did you or did you not so testify? You were still under oath’.)

Mr. Bogle: I submit, Your Honor, that I read that to him as part of my question.

The Court: He can call his attention to it here.

[2067]

A. I don’t get that.

Mr. Ryan: Well, I don’t want to take up too much time. Will you read the question again to him, Mr. Reporter. I think that it is clear enough.

(Question read)

A. Is that in regard to what time I saw Zayas Island, is that it?

Q. (By Mr. Ryan) Yes.

Mr. Bogle: I submit that the only way——

Q. (By Mr. Ryan) Yes. You could not even give an approximation of the time, could you?

(Testimony of Peter Albert Obert.)

The Court: Just wait a minute. That is not a proper response, Mr. Ryan. Advise the witness as to what subject you were referring to.

Mr. Ryan: Yes.

The Court: That is the witness' inquiry of you.

Mr. Ryan: Yes, I see.

Q. (By Mr. Ryan) I am referring to the subject of about when you could see the loom of Zayas Island. About the time when you could see the loom of Zayas Island. And you were asked the time and you said, "I don't know at what time". Then you went on further and said, in answer to the question, "About what time?"—you answered to that, "I don't know that".

A. About 1:30 or somewheres around there.

Q. Yes, but did you state under oath at that time as I read it to you?

The Court: In effect that you don't know.

Q. (By Mr. Ryan) In effect that you don't know that?

The Court: At that time. [2068]

By Mr. Ryan:

"Q. About what time?

A. I don't know that".

The Court: Do you remember whether or not you said that?

The Witness: I don't remember that.

Q. (By Mr. Ryan) You don't deny that?

A. I say I don't remember it.

(Testimony of Peter Albert Obert.)

Q. All right. Now, on page 28 of that statement under oath made by you on August 2, 1935, in the United States Attorney's office, did you or did you not state under oath as follows:

“Q. Yes, but the adjuster actually takes a series of bearings?

A. He swings the ship all around”.

Mr. Bogle: Now, just a minute, if the Court please——

Mr. Long: (Interposing) That is improper recross, if Your Honor please. He went into all that on cross examination.

The Court: Wait until he finishes and then I will hear from you, Mr. Long.

Mr. Ryan: This immediately follows what Mr. Bogle read to the witness—the very next question and answer.

The Court: Did you originally in your cross read this to him?

Mr. Ryan: No, I didn't read it to him.

The Court: Or any part of it?

Mr. Ryan: No.

Mr. Long: That was read before. [2069]

Mr. Ryan: No. Mr. Bogle has read two or three questions and then he left this out.

Mr. Long: You read it before.

Mr. Ryan: This was left out by Mr. Bogle.

The Court: Did you read that on your original cross examination?

Mr. Ryan: No, I did not.

(Testimony of Peter Albert Obert.)

The Court: All right. You may proceed.

Q. (By Mr. Ryan) At that time, on August 2, 1935, did you make this statement under oath to the persons and under the circumstances that I have described,

“Q. Yes, but the adjuster takes actually a series of bearings?

A. He swings the ship all around.

Q. He swings the ship all around, so that you get checks from a great many sources?

A. Because they always vary. There are none the same.

Q. It isn't quite fair to compare that kind of an adjustment with a single azimuth taken on one heading?

A. That is right. Of course, I would not depend on my own bearings, unless there is no trouble to find out what the deviation is”.

Did you or did you not so state under oath at that time——

A. (Interposing) I don't remember.

Mr. Long: Just a minute. I want to get——

The Witness: (Interposing) I don't remember ever making such a statement, because it is absolutely wrong.

Mr. Long: That was covered before. [2070]

The Court: It seems to me that I have heard that read before.

The Witness: You asked that before. I heard that read before.

(Testimony of Peter Albert Obert.)

Mr. Ryan: I am sure that I did not read it before. I am sorry if I did.

The Court: However, the witness has answered and said that he did not remember making such a statement. Proceed with your next question.

The Witness: I don't remember making any such statement.

Mr. Long: I will withdraw any objection that may appear in the record on this, Your Honor.

The Court: Very well.

Q. (By Mr. Ryan) Did you or did you not on August 2, 1935, in the United States Attorney's office, under the circumstances that I have described—

Mr. Long: What page?

Mr. Ryan: This is set out at page 35 of the transcript of his statement.

Q. (By Mr. Ryan) Did you or did you not on August 2, 1935, in the United States Attorney's office under the circumstances that I have described testify as follows:

“Q. But after the iron was put on board—”

This immediately follows what Mr. Bogle read on redirect examination—

“Q. But after the iron was put on board, there was every reason in the world why the ship should be swung by the compass adjuster and the deviation determined before she sailed?

(Testimony of Peter Albert Obert.)

A. Yes, but they never do that.

Q. There was very strong reason for doing that in this case before sailing, isn't that right?

A. Maybe''.

Did you or did you not so state under oath at that time?

Mr. Bogle: That is not recross, and I object to that. That is identically word for word with what I read following up what he had covered on his cross, on my redirect.

Mr. Ryan: That is where Mr. Bogle stopped. He didn't read that.

Mr. Bogle: I absolutely did read that.

The Court: Objection sustained.

Mr. Summers: If Your Honor please, if it can be developed here that in answer to one counsel he said, "Yes" and in answer to another counsel he said, "I don't remember", it would certainly affect his veracity.

The Court: You may proceed. The ruling of the Court just made will stand.

Mr. Ryan: Exception.

The Court: Exception allowed.

Q. (By Mr. Ryan) On August 2, 1935, at the United States Attorney's office, under the circumstances that I have described, and to the persons that I have indicated present, did you or did you not state under oath as follows, at pages 39 and 40 of the transcript,

(Testimony of Peter Albert Obert.)

“Q. What is the safer, the outside or the inside?

A. It is just as safe on the outside.

Q. It is equally dangerous, about, is that right? [2072]

A. Well, they are different, of course.

Q. The outside passage as compared with the inside, which is the more dangerous?

A. As far as the outside passage is concerned, you have lots of room; on the inside, you have not. Of course, you are in narrower channels, but you can see the land all the time; on the outside you can see land only on one side.

Q. Until you get to Caamano Passage?

A. Yes.

Q. Then when you get there, you haven't the benefit of lights that you have on the inside?

A. We have lights on the inside.

Q. It is really more dangerous on the outside passage?

A. That particular distance for about 140 miles, may be a little bit. Of course, along Vancouver Island you have lights”.

Did you or did you not so state under oath at that time?

A. I don't remember making all those statements.

Q. Do you deny that you made that statement?

(Testimony of Peter Albert Obert.)

A. Well, some of them are just as safe on the outside as on the inside—even better.

Q. Did you or did you not state there under oath that for that particular distance of about 140 miles up through Caamano Passage it may be a little more dangerous than on the inside passage?

A. No, I didn't say that it was dangerous. I never did say [2072½] that it was dangerous.

Q. Then I will take it piecemeal. Did you state—

The Court: (Interposing) Mr. Ryan—

Q. (By Mr. Ryan) I don't want you to—

The Court: (Interposing) Mr. Ryan, considering the amount of time that has already been indulged in on this thing, I am going to give you five more minutes for the purpose of reading excerpts from that transcript and other statements.

Mr. Ryan: Well, I think I can finish before that. That is all.

Mr. Bogle: That is all.

The Court: You may be excused from further testifying as a witness in this case, Captain, unless you are later called.

The Witness: Thank you, Your Honor.

(Witness excused)

The Court: At this time we will take a ten minute recess.

(Recess) [2073]

The Court: I ask all of those connected with the trial to try now, especially, to devise such measures as may be calculated to expedite the trial all you can, at this stage especially. You may call your next witness.

WILLIAM CLEASBY

called as a witness on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. Bogle:

Q. Will you state your name, please?

A. William Cleasby.

Q. What is your business or profession, Mr. Cleasby?

A. Licensed mariner.

Q. What licenses do you hold?

A. Unlimited Chief Mate's license.

Q. How long have you held a Chief Mate's license?

A. Seven years.

Q. How long have you been going to sea, Mr. Cleasby?

A. 26 years.

Q. How many years have you been operating on Alaska vessels?

A. Off and on for about 25 years.

Q. How long have you been operating on vessels of the Alaska Steamship Company?

(Testimony of William Cleasby.)

A. Off and on for the last 25 years.

Q. Were you on the steamship "Denali" on the voyage upon which she was stranded on Zayas Island?

A. I was.

Q. In what capacity?

A. Chief Mate. [2074]

Q. By whom were you employed as chief mate on the "Denali"?

A. By Mr. Tracy.

Q. Do you remember the date that you joined the ship?

A. It was May 13th, I believe.

Q. Where was the ship at the time?

A. The West Seattle yards.

Q. Had you previously been shipmates with Capt. Healy?

A. Yes; several times.

Q. Had you previously been shipmates with Capt. Obert?

A. Yes; I was shipmates with him the year before.

Q. As chief mate what were your duties upon joining the ship at West Seattle on May 13th?

A. Well, the morning I came aboard the second officer and myself tested out the whistle and the steering gear and the telegraph—with him—and then myself I looked over the holds, the cargo gear, lifeboats and general cargo equipment of the ship.

(Testimony of William Cleasby.)

Q. In what condition did you find the steering gear, telegraph and whistle?

A. All in good shape.

Q. Did you make any requisition for equipment, deck equipment, on this voyage?

A. Yes, sir.

Q. Among the officers who inspects the charts, navigating instruments, and makes out requisitions for any new charts or new books or navigating instruments?

A. That is considered the second-officer's work.

Q. And on this voyage who was the second officer?

A. Mr. Larson.

Q. Did he hand you such a list? [2075]

A. He did.

Q. Did you make a requisition for material?

A. Yes. I added it to my own and signed it and gave it to Mr. Murphy, I believe.

Q. I will hand you Petitioner's Exhibit No. 47, showing you the fifth page, and ask you if the signature to the left hand side "W. Cleasby" is yours?

A. Yes; that is my signature.

Q. Did you obtain the material that is shown on that requisition, except that which is crossed off? Will you examine it?

A. Yes; I got all that, I received it all.

Q. On the following page, is that your signature?

A. It is.

(Testimony of William Cleasby.)

Q. Did you receive aboard the "Denali" the equipment requested on that page?

A. It was all received.

Q. And on the seventh page, is that your signature?

A. That is mine.

Q. And the eighth page?

A. That is my signature.

Q. Did you actually, of your own knowledge—can you testify that you received all this equipment aboard the "Denali" on the voyage in question?

A. I did.

Q. Mr. Cleasby, where was your license first issued?

A. Seattle.

Q. When was it first issued?

A. In February, 1929.

Q. As first mate? [2076]

A. No; second mate.

Q. When was your first mate's license issued?

A. 1931.

Q. By the Inspectors' office in Seattle?

A. No; Hoquiam, Washington.

Q. Have you your license with you?

A. Yes, sir (showing).

The Court: Mr. Cleasby, I think in your case we will probably experience some difficulty in hearing your words, and I want you to try to bear that in mind and speak as clearly and distinctly as you can at all times.

(Testimony of William Cleasby.)

The Witness: I will.

Mr. Bogle: It may save the record a little bit if I can show this license to counsel and ask them if they will stipulate it into the record, so that we will not have to put it in evidence.

Mr. Ryan: Yes.

The Court: Upon consent of counsel it may be copied into the record as the license of this witness, in effect substantially in its present terms as at the time of the stranding of the "Denali".

(First page)

"C. Form 871	File No. L. 14670
Serial Number	Issue Number
61440	2, 3

United States Department of Commerce
Bureau of Navigation and Steamboat Inspection
License to Mate of Ocean or Coastwise Steam
and Motor Vessels

This is to certify that William Cleasby having given satisfactory evidence to the undersigned United States Local [2077] Inspectors Bureau of Navigation and Steamboat Inspection, for the district of Seattle, Wash., that he is a skillful navigator and can be intrusted to perform the duties of Chief Mate on Steam and Motor Vessels of any gross tons, upon the waters of any Ocean is hereby licensed to act as such Chief Mate on Steam and Motor Vessels for the term of five years from this date.

(Testimony of William Cleasby.)

Given under our hands this 8th day of October, 1936.

DANIEL B. HUTCHINGS

U. S. Local Inspector of Hulls

WILLIAM M. CAMPBELL

U. S. Local Inspector of Boilers

O Form 1240.

(Second page)

Signature of holder of license William Cleasby (Thumb print)

Date of birth Nov. 29, 1897.

Place of birth Canada

Naturalized

Date of Naturalization Nov. 6, 1907 (Mother)

Place of Naturalization Nome, Alaska

By what Court Mother's marriage to American

Naturalization Certificate No. Citizen
on above date

Present address Seattle Hotel, Seattle

Passed visual examination Oct. 8, 1936

Visual examination on file in the office of Seattle

DANIEL B. HUTCHINGS

WILLIAM M. CAMPBELL

(U. S. Local Inspectors
issuing license.)"

Q. (By Mr. Bogle) Mr. Cleasby, at what time did the ship leave West Seattle on the morning of May 13th?

(Testimony of William Cleasby.)

A. I think it was about 7:30 in the morning.

Q. What were your particular duties from the time the vessel [2078] left the West Seattle yard until she sailed on the 16th?

A. To see that everything was in shape for loading cargo, the general equipment of the ship, the upkeep of the ship, and the stores on board.

Q. You are the ship's executive officer, are you?

A. Yes.

Q. Are you in charge of the deck crew, the unlicensed deck crew?

A. Yes.

Q. Did you have a full crew as required by your certificate, deck crew?

A. Yes; a full crew.

Q. Did you have any duties with reference to navigation while the vessel was shifting around the harbor of Seattle, from the 13th to the morning of the 16th?

A. No, not in connection with navigation.

Q. In what condition was the ship's gear, the running gear and deck equipment, when she sailed from Seattle on the 16th?

A. It was all in good shape.

Q. When the vessel left Pier 2 on the morning of the 16th were you on watch?

A. I was.

Q. Do you remember what time she sailed?

A. About 5:30.

Q. Where did she go from Pier 2?

A. Off of West Point, to load powder.

(Testimony of William Cleasby.)

Q. When you arrived off of West Point did you load powder?

A. We did. [2079]

Q. In what way? How was it loaded?

A. With No. 2 gear.

Q. I mean, was it from a dock——

A. From a boat.

Q. What size boat?

A. Well, a small boat, about 50 or 55 feet long, a small wooden boat.

Q. Where was that boat moored?

A. On the starboard side, abreast of the foremast.

Q. Did you load powder from more than one boat?

A. Two boats.

Q. Do you remember about what time you finished loading powder from the second boat?

A. Well, it would be after 8:00 o'clock sometime.

Q. Mr. Cleasby, while you were loading powder, after arrival off West Point, do you know what the captain and second officer were doing, or did you see them?

A. Well, they were up taking bearings, on the bridge.

Q. What was the ship doing during that time?

A. This is on the second powder boat?

Q. No; from the time you arrived, first arrived off of West Point.

A. Well, on the morning I know around 7:00 o'clock they were taking bearings. We had a little

(Testimony of William Cleasby.)

way on the boat, had to have a little way on the ship in order to swing the ship to take their bearings.

Q. Was the ship swinging during that time?

A. Yes; she swung during that time.

Q. Did you have any duties with reference to the loading of the powder? [2080]

A. Yes; I was in charge of it.

Q. After these Alaska freighters leave the Port of Seattle what are your duties with respect to cargo?

A. Well, I am in full charge of the loading and the unloading after we leave Puget Sound.

Q. At all Alaska ports?

A. At all Alaska ports.

Q. Were you engaged in the loading of this powder?

A. I was.

Q. Did you have any conversation with the captain of either of the powder boats?

A. I don't remember having any conversation with the captain of the first boat, but the last boat, I asked him if it was all right for us to go ahead slow while they were swinging the ship, and he said it was all right, and he said he was going to Kingston, anyway, and I said "That is fine." I said that about the time we finished loading we would be about off Kingston, and that would help him on his way, and at the same time it would help out with the ship, by keeping a little way on her while they were swinging the ship.

(Testimony of William Cleasby.)

Q. Where did you drop the second powder boat?

A. It was off of Kingston somewhere.

Q. Now, Chief, after you finished loading this powder, and on the voyage to the time of the stranding, that is, during the 16th, 17th and 18th, did you stand any navigation watch?

A. No, no regular watch. I am not supposed to stand a watch on that run. I have enough to do looking after the freight. But in spare time I used to spell off the captain on his [2081] watch, stand part of his.

Q. On this particular trip that we are interested in, Mr. Cleasby, did you stand any watch on the bridge?

A. Yes; I stood a couple of watches.

Q. Did you make any entries in the log book?

A. I am pretty sure I did at some place.

Q. Take Claimants' Exhibit A-4. You might look through that and see if any of those entries are in your handwriting.

A. Yes.

Q. You identify some of that as your handwriting, and if so, on what date?

A. Yes; here is some of my handwriting right here (showing).

Q. On what date, please?

A. May 17th, 1935.

Q. At what hour?

A. That is up to midnight—no, up to noon, or at noon, I should say. I relieved the watch a couple of minutes early, and I filled in the 12:00 o'clock entry.

(Testimony of William Cleasby.)

Q. Do you remember how long you stood the watch on that occasion?

A. I think about four hours.

Q. Did you stand watch on any other occasions, to the best of your recollection?

A. Yes; I think I stood the evening watch the same night.

Q. For about what length of time?

A. About four hours.

Q. During the time that you were on watch what was the condition of the vessel's navigating equipment and gear, including her compasses and steering gear? [2082]

A. All in good shape.

Q. Was she making her courses properly?

A. Yes; she made her courses, all bearings taken checked out fine.

Q. Were you on watch at midnight of May 18th, when the vessel was abeam, or about abeam of Triple Island?

A. No.

Q. Were you on watch at the time she stranded?

A. No. I was asleep.

Q. Were you awakened by the stranding?

A. Yes; I woke up when she hit.

Q. What did you do?

A. I immediately went out on deck, and I went up on the bridge with the captain, and I went down then and took soundings.

(Testimony of William Cleasby.)

Q. Did you see the captain when you went on the bridge?

A. Yes; we met in the alleyway; we both got out at the same time.

Q. Did he give you any orders?

A. Yes; he told me to take soundings right away, and I took the soundings up to the bridge and reported them to him.

Q. You mean ship soundings, to see whether she was taking water?

A. In the bilges, yes.

Q. What did you find?

A. I found she was making water fast in No. 1 and No. 2.

Q. Did you make any report to the captain?

A. Yes. I notified the captain right away on the bridge, and he said "Take a bearing on Tree Point Light." [2083]

Q. Where were you at that time?

A. On the bridge.

Q. In the pilot house?

A. In the pilot house.

Q. Did you take a bearing on Tree Point Light?

A. I did.

Q. How did you take that bearing?

A. With the Hanson Bearing Board.

Q. What bearing did you get?

A. North by West.

Q. How did you determine that it was North by West?

(Testimony of William Cleasby.)

A. Well, after I took the bearing with the bearing board I laid a point and a half on the left hand side, I took the heading of the ship, looked in the compass and took the heading of the ship, and I knew then the bearing was North by West, because the ship's head was North $\frac{1}{2}$ East.

Q. The bearing board showed how much on the port bow?

A. A point and a half.

Q. At Tree Point Light?

A. At Tree Point Light.

Q. Did you look at the compass at that time?

A. I did.

Q. How was it heading?

A. North $\frac{1}{2}$ East.

Q. How did you determine the bearing?

A. By applying that point and one-half to the left, which would be North by West.

Q. Do you know whether or not Mr. Larson, the second officer, took any bearing? [2084]

A. Yes. The captain told him to take one at the same time, from the standard compass.

Q. But you didn't see him take it?

A. No; I wasn't up there when he took it.

Q. Were you present when he reported to the captain what the bearing was?

A. Yes; I was there when he returned.

Q. What did he report to the captain?

A. He says, "It is North by West."

Q. Did you lay that bearing down on the chart?

(Testimony of William Cleasby.)

A. Yes; I plotted it down on the chart, and it read right over the rock on which we were stranded.

Q. What did that indicate to you as to the condition of your compass at that time?

A. It showed the compass was just right, because if she hit a rock that small all the way from Tree Point she couldn't be out.

Q. What was the condition of the weather at that time?

A. Calm.

Q. And as to visibility?

A. The visibility was what I would say was pretty good. We could see Tree Point Light 14 miles off, and the land behind it.

Q. What can you say of Dundas Island?

A. Well, of course the light itself was deceptive from the angle we was laying on.

Q. What angle were you laying on? What do you mean by that?

A. Well, the angle that we entered the channel on. The way she was laying looked as if she was more mid-channel than she really was. [2085]

Q. That is, when you first came out?

A. Yes. I know Capt. Healy mentioned that it looked that way to him, too, and that is why he was so particular about taking a bearing.

Q. I will hand you Petitioner's Exhibit No. 34 and ask you if that correctly shows the wreck of the "Denali" as you saw it on that morning?

A. This is the morning after.

(Testimony of William Cleasby.)

Q. Oh, that is the morning after the stranding?
The morning of the 20th?

A. Yes.

Q. Does that show the condition of the channel
as you saw it that morning, headed in this direction?

Mr. Ryan: That is objected to as leading.

The Witness: Well, I am looking at it the other
way.

The Court: The objection is sustained.

Mr. Bogle: Well, he said that was the next morn-
ing.

Q. (By Mr. Bogle) How long did you stay
aboard, Mr. Cleasby?

A. I don't know what time we did leave. Some
time in the forenoon, the captain and myself and
the third mate.

Q. Were you the last three to leave the boat?

A. We were.

Q. Mr. Cleasby, do you know what was done
with the charts or navigating equipment?

A. Well, I know that the log book was given
to the purser when he left, quite early, and then
the rest of it was made up and put in the lifeboat.

Q. Did you have anything to do with putting
them in the lifeboat?

A. Part of them I lent a hand on. I wouldn't
swear for [2086]

Q. You think you did what?

A. I think I lent a hand.

Q. What lifeboat was it put in?

(Testimony of William Cleasby.)

A. I wouldn't know the number of it. It was the last one that left.

Q. Was it the lifeboat that you left the ship in?

A. Yes.

Q. Do you know what happened to the navigating gear and charts?

A. Well, when we got out to the Coast Guard Cutter it was pretty rough, and I remember that the third mate passed some of the stuff aboard, and he pretty near got caught in between the boat and the Coast Guard boat, and they told him to let it go and get aboard. Then afterwards, they dropped the boat astern and it swamped, it was so rough that they cut them adrift.

Q. Was all that gear lost?

A. Everything was lost that they took aboard the boat. I don't know how much they did salvage.

Q. Could you see the current after the vessel stranded, alongside the hull?

A. Yes. You could see it was running very heavy, because I went to look over the bow just a few minutes after we struck, and was taking soundings, and the rock was just showing through the water then. You could see the water running alongside of it.

Q. How long do you think that was after the stranding?

A. Oh, I would judge around 15 or 20 minutes.

Q. Do you know at what height of water that rock starts to bare? If you don't know, we can get it. [2087]

(Testimony of William Cleasby.)

A. I think it starts to dry at 12 feet, if I remember right.

Q. Did you try to row against that current at any time that morning?

A. Yes; when we left the ship, Capt. Healy, myself and the third mate, we tried to row against it, and we couldn't row against it, it was shoving us over against the island, and Capt. Obert's boat was coming out at the time and he had plenty of men in it, and he put some men in our boat to help us out. I know it was impossible for the three of us to row against the current.

Q. Which way was it running at that time, Mr. Cleasby?

A. She would be flooding at that time.

Q. I mean the direction of the current?

A. It would be running easterly.

Mr. Bogle: I think that is all.

The Court: At what point was it running easterly?

The Witness: After she started to flood.

The Court: I know, but you mean at or about the place of stranding?

The Witness: Yes; about the place of stranding.

The Court: Running easterly at the place of stranding, at the time you left the vessel?

The Witness: I couldn't say what time, exactly, we left. I don't remember what time we did leave the boat.

(Testimony of William Cleasby.)

The Court: How long was it after you got on deck, immediately after the stranding, about, if you can say how long it was?

The Witness: About 10:00 o'clock, I suppose.

The Court: In the forenoon, following the stranding [2088] in the early morning of that same forenoon, or that same day?

The Witness: That same day.

The Court: Do you know approximately the time of the stranding?

The Witness: About quarter to three.

The Court: In the early morning?

The Witness: Yes, sir.

Mr. Bogle: Was the tide ebbing or flooding at the time?

The Witness: Well, she was starting to flood by then.

The Court: Had its direction changed subsequent to the time of the stranding?

The Witness: Yes; the tide had changed by that time.

The Court: Going in a reverse, or generally speaking a reverse direction to that at which it was moving at the time of the stranding?

The Witness: Yes, sir.

Cross Examination.

By Mr. Ryan:

Q. You just looked down at the surface of the water, is that right, and looked at it?

(Testimony of William Cleasby.)

A. Yes.

Q. Well, when you are in the very immediate vicinity of a rock or reef there are always surface currents of that sort in that immediate vicinity, due to the reef, isn't that so?

A. If there is a tide running, yes. [2089]

Q. That wouldn't give any indication at all of what the direction of the current was, say a mile away, out in the open water, would it?

A. That is hard to say. I wasn't out there.

Q. You testified before the United States Steamboat Inspectors, didn't you, at the investigation of this case?

A. I was up there, yes.

Q. Did you tell the Steamboat Inspectors at any time that you were on watch at any time during this voyage?

A. I don't know as they asked me.

Q. Your best recollection is that you did not tell them, isn't that right?

A. I couldn't say, because I don't know whether he asked me or not. It would be there if he did.

Q. You say you relieved the master as the watch officer on the bridge?

A. I said I used to spell him off.

Q. On this particular day, May 17th, is that right?

A. Yes, the 17th.

Q. From what time to what time?

A. I know it was from 8:00 a.m. to noon.

(Testimony of William Cleasby.)

Q. From 8:00 a.m. to noon on May 17th you relieved the master as the watch officer on the bridge?

A. Yes, sir.

Q. So that if the master swore that he was standing watch on that watch as the watch officer that testimony is incorrect, isn't it?

A. Not necessarily. I was there merely to assist him, and if he deemed it was safe to leave me there he would do that. [2090]

Q. But the fact is he did leave you there, and he was not there himself, isn't that right?

A. Oh, he would be up there every once in a while. He never stayed away very long.

Q. How long were you personally on the bridge on May 17th, of the "Denali"?

A. I was there from 8:00 to 12:00 in the morning, in the forenoon. That I know. The writing is in the log book there to prove it.

Q. Where was the master?

A. He was around the ship.

Q. Not on the bridge?

A. Not all the time, no. He would come up every once in a while and have a look around.

Q. Who was on watch with you?

A. I think Mr. Larson might have been around.

Q. The second mate?

A. I won't say he was around all the time, but I know we used to be up there. If it was the evening watch or dark we used to be both together.

(Testimony of William Cleasby.)

Q. Didn't the second mate stand a watch regularly with the master?

A. Regularly with the master, yes.

Q. So that when you relieved the master on May 17 did the second officer stand the watch with you?

A. Sometimes he didn't stay from 8:00 to 12:00 in the morning. If he did it was of his own accord.

Q. Did he stay on the bridge or not on that day, May 17, 1935, between 8:00 a.m. and noon, if you know?

A. He might have been there part of the time. I won't swear [2091] for sure.

Q. Who was the navigating officer of the "Denali"?

A. The second officer.

Q. Well, every time the vessel was to take bearings on lights, or take azimuths, or anything of that sort, that would be done by the navigating officer, the second mate, wouldn't it?

A. Not necessarily. If he was not around I would take it myself.

Q. Yes, but I mean that is his job, isn't it, that sort of thing?

A. When he is on watch. It is any officer's job to do that. It doesn't have to be the navigating officer.

Q. Why did you say the second officer is the navigating officer of the ship?

(Testimony of William Cleasby.)

A. Well, that is a term of speaking, being as he generally looks at the chart and navigating equipment, and the sounding machines—that is generally considered the second officer's watch, and as such he is generally termed the navigating officer.

Q. And he takes the bearings and azimuths, and things of that sort, that are distinctly navigation, whether he is on definite watch or not, isn't that so?—unless he is asleep?

A. Not necessarily, no. Any officer is supposed to be able to do that.

Q. What do you mean by the second officer being on watch with you but not there all the time?

A. I said in the day time he wouldn't be there all the time, unless he did it on his own accord, because his watch [2092] would be up at 8:00 o'clock in the morning. If he stayed up after that it was of his own accord. He would just come around and maybe study or do some little job he wanted to do.

Q. He did stay on the bridge, though, when he was not on watch?—That is his regular watch, isn't that right?

A. Oh, not all the time.

Q. But practically all the time?

A. No, I cannot say that.

Q. Except when he was asleep, isn't that so, on the "Denali"?

A. No, I couldn't say that. In nice weather he used to go off at 8:00 o'clock in the morning.

(Testimony of William Cleasby.)

The Court: Let those present avoid making any signs by shaking of the head or other display of approval or disapproval of the witness' statements. Proceed.

Q. (By Mr. Ryan) Well, the second mate and the third mate stood watch and watch on the "Denali", didn't they?

A. How do you mean, watch and watch?

Mr. Bogle: Your Honor, I would like to have it clear that that was not referring to counsel.

The Court: Well, the Court will let the record show that that was nobody connected with the management of the proceedings.

Mr. Bogle: Thank you, Your Honor.

The Court: Among the spectators the Court observed some things which I do not wish this witness to see while he is testifying.

Q. (By Mr. Ryan) Now, who stood watch with the pilot on the "Denali"?

A. The third mate. [2093]

Q. And who stood watch with the master?

A. The second mate.

Q. If the master testified that you would relieve only for coffee do you contradict that testimony?

A. No. He never said that. I was listening to him. He said that I relieved the pilot for coffee in the afternoon.

Q. I see. So if Mr. Murphy testified that the custom of this company for a great many years had been that the chief mate should stand no watch,

(Testimony of William Cleasby.)

then that testimony, if he gave it, is incorrect, is that right?

A. No; that is correct. I stood that watch of my own will. When you are chief mate you are studying to be pilot, and naturally you get up there to learn. You cannot stay in your bunk and learn.

Q. Then you say you stood an evening watch on May 17th—who stood watch with you?

A. The second mate.

Q. He stood watch with you from 6:00 p.m. to midnight, didn't he?

A. I don't think I stayed up all the time. After it got dark the captain himself came up, I believe.

Q. So now your testimony is that you stood watch on the evening of May 17th only from 6:00 p.m. to dark, is that right?

A. I won't say 6:00 p.m., but somewhere around that time.

Q. About what time?

A. I made no notation, because the second officer keeps the log book. I could check up with my own writing there, but the second mate is on then, so naturally he would make the entries, and I wouldn't know for sure. [2094]

Q. Now, you testified that after the stranding you went up on the bridge, and the captain told you to take a bearing of Tree Point Light, is that right?

A. Yes, sir.

Q. What compass did you look at?

A. The steering compass.

(Testimony of William Cleasby.)

Q. Did you look at the standard compass?

A. No, sir.

Q. Did you know what the difference was between the steering compass and the standard compass?

A. I did shortly after, yes.

Q. What was the difference?

A. No difference at all. [2095]

Q. How did you take the bearing?

A. I took it with the Hanson Bearing Board and against the face of the window to hold it straight, and the bearing was a point and a half on the port side, the left hand side, and I looked at the heading of the ship and the compass, which was north and half east, so that would make the bearing a point and a half to the left or North by West.

Q. The captain says that you did not report to him the compass heading of the ship, and that all you took was a relative bearing from the bow around a point and a half.

Mr. Bogle: That is objected to.

Q. (By Mr. Ryan) If the captain so testified that was incorrect, is that right?

Mr. Bogle: I object to the form of the question.

A. Well—

Mr. Bogle: (Interposing) Just a minute, please. I object to the form of the question. He is referring to the captain's testimony. He should give us the page in the record and read it to us. Our recollection is that the captain did not so testify.

(Testimony of William Cleasby.)

The Court: Well, I cannot stop the case to have him refer to the record. He may state—as long as he is acting reasonably, and I assume that everybody is doing his best to act that way, I am going to let him propound the question, asking him was so and so done or was so and so said.

The Witness: What do you mean by “relative bearing”? The question is not clear to me at all.

[2096]

Q. (By Mr. Ryan) Well, I mean taking a bearing of an object and say that it bears a point and a half on the port bow.

A. Yes, I could.

Q. You don't have to look at the compass, do you? All you have to use is your bearing board, isn't that right?

(Witness does not answer)

Q. Now, the captain says that that is so, that you took that bearing.

A. The captain is mistaken.

Mr. Long: The captain did not say any such thing.

The Witness: I do not want to say that he is mistaken. He never said that because that is not what happened, because I took the bearing under the captain's orders. He would certainly know that I could not take a bearing without opening the compass with a Hanson Bearing Board—I could not take a bearing with a Hanson Bearing Board

(Testimony of William Cleasby.)

without looking in the compass to check it up afterwards.

Q. (By Mr. Ryan) Now, you know that that heading of the ship was a very important fact to know in connection with ascertaining the cause of this stranding, did you not?

A. Well, I know it now, yes, sir.

Q. You knew it at the time that you took it, too, didn't you?

A. Well, I won't say that. I was not thinking that.

Q. Why did you think that the bearing was being taken?

A. Why?

Q. Yes.

A. So as to check up exactly where we were. I remember [2097] conversing with the captain and he said we would look farther in the channel and he said, "Take a bearing on Tree Point Light and plot it off on the chart", and he sent the second officer off with the standard compass at the same time.

Q. Now, you never told the Steamboat Inspectors, when you were sworn to tell the whole truth about that, anything at all about taking this bearing, or that you knew the magnetic heading of the ship or the magnetic bearing of Tree Point Light right after the stranding, did you?

Mr. Long: I object to that as repetitious.

The Court: Objection overruled.

(Testimony of William Cleasby.)

Mr. Long: That having been gone into on cross examination.

The Court: Objection overruled.

A. Well, it is just like anybody else at the hearing, if they ask you a question they don't want you to tell them something else. If they ask you a question they want you to answer that question and not a lot of other things.

Q. (By Mr. Ryan) But you didn't tell them anything about that at all, did you?

A. I could not. They didn't ask me.

Q. They didn't ask you?

A. No, sir.

Q. Were you or were you not asked the following question, and did you not give the following answer at the investigation made by the United States Steamboat Inspectors in Seattle in May, 1935—it is on page 20 of the transcript that I have,

[2098]

“Q. As an officer of the ship have you any information which you may think to be of value about this wreck?

A. No, I cannot say that I have”.

Were you asked that question and did you give that answer under oath?

A. I suppose I did, if it is there.

Q. What?

A. I suppose I did, if it is there. I cannot remember.

(Testimony of William Cleasby.)

Q. Well, your best recollection is that you did, isn't it?

A. No. My best recollection is that I don't remember whether it was asked me or not.

Q. Do you deny that you made that statement—

A. (Interposing) No.

Q. (Continuing)—in answer to that question?

A. No, I don't deny that.

The Court: All right. Proceed and ask him another question. Let us expedite this examination.

Mr. Ryan: Yes, Your Honor.

Q. (By Mr. Ryan) Now, this conversation that you had with the master of the second powder boat, will you state in substance what was said by you during that conversation and what was said by him, as best as you remember it, while you were in the immediate vicinity of each other off West Point, just after leaving Pier 2 at Seattle?

A. I don't remember talking to the first powder boat at all.

Q. The second powder boat I am asking you.

A. Oh, the second powder boat.

Q. Yes.

A. I asked him if he would mind us going along as well, and [2099] he said, "No". He said not as long as we were going towards Kingston. He said that he was going to Kingston himself. And I said something to the effect about the captain wanted to have a little bit of way on the ship so as to be

(Testimony of William Cleasby.)

able to swing to check bearings, and he said it was fine and dandy. That was all there was to it.

Q. You are positive that you said that the captain wanted to swing the ship, are you, that you told him that?

A. It is a long while back to ask me to be absolutely positive of every word that I said. That is pretty near three years ago.

Q. Yes.

A. And to ask in a casual conversation every word that I said, that is a little bit too much to remember, every word.

Q. Well, now, isn't it a fact that you told the master of the second powder boat, "We are late and we are in a hurry and we want to keep on going", and, "Do you object to our proceeding ahead toward Alaska towing you slow ahead?" And did you or did you not——

The Court: (Interposing) Just propound that part of the question.

Mr. Ryan: Yes.

Q. (By Mr. Ryan) Did you or did you not make that statement to the master of the second boat?

A. No.

The Court: Proceed.

Q. (By Mr. Ryan) Are you positive about that?

A. I am sure about that. I know that we never mentioned that [2100] we were behind time.

(Testimony of William Cleasby.)

Q. But at any rate the reason for the slow speed ahead of the "Denali" while the second powder boat was loading cargo was that the "Denali" wanted to keep going ahead and not the powder boat, isn't that right?

A. No.

Q. Well, state why it is not right.

A. Well, it is always safer if you have got a little way on the ship when you are laying like that in a traveled lane. You always have more command of the ship, and you can keep her headed to the tide, and so on.

Q. You would say that it was for the safety purposes of the "Denali"——

A. (Interposing) Well, you asked me, and I am telling you.

Q. (Continuing) That the "Denali" kept going ahead on the way from West Point to Apple Cove Light; is that right?

A. You asked me for any other reason and I gave you it.

Mr. Long: I object to the argumentative question of counsel.

The Court: The Court is going to overrule the objection to this particular question, but it is really a collateral matter. I might say that there is something about the conduct of this present examination that indicates that either the counsel or the witness, or both, may be sparring for time. I would wish you would proceed with your examination.

(Testimony of William Cleasby.)

Mr. Ryan: I am trying my best to cover this in as short a time as possible.

The Court: The examination is proceeding too slowly. Please expedite your examination. [2101]

Mr. Ryan: I will expedite it as much as I can. Will you answer that question?

A. What is your question?

Mr. Ryan: Read the question.

(Question read as follows:

“You would say now that it was for the safety purposes of the ‘Denali’ that the ‘Denali’ kept going ahead on the way from West Point to Apple Cove Light; is that right?”)

A. I said, “No”.

The Court: Ask him another question.

Q. (By Mr. Ryan) What was the reason why the “Denali” kept going ahead from West Point to Apple Cove Light on the way to Alaska while she was loading dynamite from a powder barge or the second powder barge?

A. Well, I don’t know just what time they finished taking their bearings. I was working on the dynamite, and I know there was a little way on the ship to keep the ship so as to be able to swing the ship so they could take bearings, but just how far it was in there I don’t know, and the man on the boat told me that he was going to Kingston, and I said, “Well, if we have you off of Kingston by the time that we finish discharging will that be fine?” And he said, “Yes.”

(Testimony of William Cleasby.)

Q. Did he say—well, I have already asked that. So you swung ship while you were loading dynamite from the second powder boat, isn't that right?

A. I cannot say that. I was not up there taking no bearings. I was working on the dynamite. You will have to ask them about that.

Q. Well, the second powder boat came alongside, didn't she? [2102]

A. Yes, sir.

Q. And she was secured with lines?

A. Yes, sir.

Q. And you had this conversation with the master of the second powder boat that you have described?

A. Yes, sir.

Q. And the first powder boat left shortly after the second powder boat secured alongside, didn't she?

A. I think she left before the other one secured, if I remember right.

Q. I see. Then you loaded dynamite from the second powder boat?

A. Yes, sir.

Q. And then you began to swing ship, is that right?

A. We might have been just about finished by then. I don't know. You will have to check by the time. I believe there is no doubt about it. We were still—we were taking powder while they were swinging, but I cannot say whether the boat was there

(Testimony of William Cleasby.)

when we finished taking bearings. I cannot say for sure because I don't know what time they finished with the bearings. I had nothing to do with that.

Q. You had nothing to do with the swinging of the ship or the navigation?

A. No. I knew they were up there getting the bearings.

Q. Well, you were down working, weren't you?

A. Yes, sir.

Q. All you know is that they were up on the bridge, isn't that so?

A. Yes, sir, they were up there.

Q. You don't know what they were doing on the bridge, do you? [2103]

A. Well, you have a general idea after you have been to sea a long while.

Q. But you didn't—you were down working around in the shelter deck and around there—around the No. 2 booms at the time, isn't that so?

A. I was.

Q. You weren't up in the pilot house or at the bridge at any time, were you, in connection with that?

A. No, I cannot say for sure that I was.

Q. Now, you said something about going on watch on sailing. Do you mean that,—about going on watch on sailing from Seattle.

A. On watch, yes.

Q. You do not mean that you were standing watch on the bridge?

(Testimony of William Cleasby.)

A. No.

Q. You had nothing to do with navigation?

A. No.

Q. You didn't stand a regular watch as a watch officer on that trip, did you?

A. No. The first mate is not required to stand a watch on the Alaska run.

Q. And that has been the practice on ships of the Alaska Steamship Company for a great many years, has it?

A. As long as I have had any knowledge, yes.

Q. How long have you been working for them?

A. Off and on for twenty-five years.

Q. Now, in Seattle, on May 15th, when you were on duty—during what hours were you on duty on that date?

A. May 15th? [2104]

Q. Yes.

The Court: If you can recall you may say so; if not, say so.

A. I don't recall exactly. I generally go off at four o'clock if everything is all right.

Q. (By Mr. Ryan) Four o'clock in the afternoon?

A. Yes, sir.

Q. Your job is to load the cargo in the day time, isn't that right?

A. No.

Q. At that time—

A. (Interposing) In Seattle they have stevedore bosses for that.

(Testimony of William Cleasby.)

Q. Well, you watch them doing that. I mean, that is your job?

A. Oh, yes.

Q. In connection with loading cargo?

A. Yes, sir.

Q. Isn't that right?

A. Yes, sir.

Q. And the discipline of the crew and things like that in the harbor, is that right?

A. Yes, sir.

Q. Now, when were you asleep? When did you go to sleep on the night of May 15th, do you remember, or on the whole day of May 15th, if you remember?

A. At eight or nine o'clock.

Q. At night?

A. Yes, sir.

Q. When did you get up the next morning?

[2105]

A. About four o'clock.

Q. Then what did you do? That is May 16th, now?

A. Yes, sir.

Q. Then what did you do from then on?

A. Saw that everything was shipshape for sailing and that the crew was all aboard.

Q. You went on duty then when you got up, is that right?

A. Yes, sir.

(Testimony of William Cleasby.)

Q. And you stayed on duty in connection with the loading of cargo and the discipline of the crew until what time on the 16th?

A. That is hard to say. I would be on all day.

Q. From 8:00 A.M. to 4:00 P.M., is that right?

A. Yes, sir.

Q. On May 16th?

A. Yes, sir.

Q. You were on duty?

A. Those are my hours of duty.

Q. Well, those are the hours that you were on duty on that occasion, is that right, on May 16th?

A. I may happen to be on a little bit longer than that because there is always a little something to do when you are leaving, aboard.

Q. 8:00 A.M. to what time in the afternoon were you on duty then?

A. I don't remember. I don't remember just what time my work was finished.

Q. Well, would you say it was 5:00 o'clock or 6:00 o'clock?

A. Well, I would knock off at 5:00 o'clock for supper.

Q. Yes. [2106]

A. And any other duties that would be required—

Q. (Interposing) Did you perform any other duties that evening, May 16, 1935?

A. I cannot say for sure.

Q. All right. Now, May 17, 1935. On the night of May 16th you went to bed, didn't you?

(Testimony of William Cleasby.)

A. Yes, sir.

Q. About what time?

A. 8:00 or 9:00 o'clock.

Q. And then you got up the next morning on May 17th, 1935, at what time?

A. At 7:20.

Q. And went on duty at what time?

A. I went up on the bridge shortly after 8:00 o'clock.

The Court: What is the purpose of all this, counsel?

Mr. Ryan: We have charged in our specifications and in our pleadings improper division of watches of the mates—the three mates on this ship. They were not divided into proper watches.

The Court: Very well. Proceed.

Mr. Ryan: And we have submitted authorities on the matter to Your Honor in the brief.

Q. (By Mr. Ryan) Then from 8:00 A.M. until noon—from 8:00 A.M. on, on May 17th, what did you do? Where were you on duty—were you on duty, and if so, where?

A. I stood watch on the bridge, I think.

Q. I see. From 8:00 A.M., until noon, is that right?

A. I believe so.

Q. You relieved the master? [2107]

A. Yes, sir.

Q. And the second mate stayed with you?

A. No, I cannot say that the second mate was up there that morning.

(Testimony of William Cleasby.)

Q. So, from 8:00 A.M. to noon on May 17th you were up there, to study navigation and to learn, and the master and second mate walked off the bridge and left you alone for four hours, is that right?

A. I told you a while ago that the master was always around during his watch.

Q. Well, how about the second officer? Was he around during his watch or not?

A. That was not his watch. He was off the watch then, unless he stayed up there of his own accord.

Q. Well, on that day was he on watch or not from 8:00 A.M. until noon?

A. No.

Q. Was he actually on the bridge or in the chart room performing some duties in connection with navigation, if you know?

A. I cannot say that either way for sure, but I know that he was not on watch. If he was up there at all it was of his own accord. I cannot say whether he was or not. You will have to ask him.

Q. I see. And then at noon on May 17th what happened, or what did you—did you perform any other duties, and, if so, what?

A. Well, the pilot took over the watch at noon.

Q. Then what did you do? What duty did you take up?

A. I don't know what I did then. I might have went to bed. [2108]

Q. Well, you just got up at 7:20 in the morning, didn't you?

(Testimony of William Cleasby.)

A. Well, a nap in the afternoon comes in pretty good.

Q. I see. So you didn't perform any duties on the afternoon of May 17th, is that right?

A. No. Not that I can positively remember, no. I am always on duty, as a matter of fact.

Q. Now, on the evening of May 17th when did you go on duty again, if you did?

A. Well, I am always called at 7:20 in the morning.

Q. No. On the evening of May 17th.

A. Oh, in the evening?

Q. Yes. Did you perform any duties then?

A. Well, I went up and relieved on the bridge again—worked on the bridge.

Q. From 6:00 P.M. until dark?

A. I believe so. I believe that that was the time.

Q. And you relieved the master for dinner?

A. No.

Q. Whom did you relieve for dinner?

A. The master comes up after the eats.

Q. Who did you relieve at 6:00 P.M. on May 17th?

A. Well, that would be the pilot.

Q. Well, I thought the pilot had the midnight to 6:00 o'clock watch, and the twelve to 6:00 watch?

A. Well, that would be at 6:00 o'clock, wouldn't it, at night?

Q. I know, from 6:00 o'clock—when did you go on duty again on the afternoon or evening of May 17th?

(Testimony of William Cleasby.)

A. Well, I told you that I went up to relieve the captain.

Q. Oh, you relieved the captain? [2109]

A. Yes, sir.

Q. For how long did you relieve the captain on the evening of May 17th?

A. I think I stayed there until it was dark.

Q. And at what time did you relieve him—beginning at what time?

A. Well, as soon as he relieved the pilot and got his watch squared up.

Q. That would be at 6:00 o'clock or 6:30?

A. 6:00 o'clock or a little bit before.

Q. Then you stayed on until dark?

A. Then I stayed on until dark, yes, sir.

Q. Then who relieved you?

A. Well, the captain assumed command of it.

Q. Then during the six to eight watch the second mate was with you?

A. Yes, sir. The 6:00 to midnight?

Q. Yes. He was on there with you all the time on that watch?

A. Yes, sir.

Q. He was there all the time with you?

A. Yes, sir.

Q. There were only three mates on the "Denali"?

A. Yes, sir.

Q. And she was over a thousand gross tons?

A. Yes, sir.

(Testimony of William Cleasby.)

Q. And a voyage from Seattle up to Metakatla is more than four hundred miles, isn't it?

A. It should be, yes, sir.

Q. I see. Then the next day, May 18th, did you go up and [2110] relieve anybody for coffee, or go up to study navigation any more, or do anything of that sort?

A. No doubt I went up there when the second mate got off in the morning. No doubt I went up there when the second mate got off at 8:00 o'clock, to help the captain.

Q. Do you remember whether you did or not?

A. I cannot say for sure.

Q. You were not required to do it, were you? It would not be a part of your duty?

A. No, I was not required to do that.

Q. And you don't remember that you did it on May 18th?

A. No, I cannot say for sure on May 18th.

Q. Did you go up on the bridge at any time on May 18th?

A. Oh, yes.

Q. To relieve anybody for coffee, or anything like that?

A. Oh, yes. You always relieve for coffee.

Q. When did you relieve for coffee?

The Court: That question may be propounded in the morning.

Mr. Ryan: I beg your pardon. I was trying to finish.

(Testimony of William Cleasby.)

The Court: The court is adjourned until tomorrow at ten o'clock in the forenoon.

(Whereupon an adjournment was taken at 4:30 o'clock P.M., November 4, 1937, at 10:00 o'clock A.M., November 5, 1937.) [2111]

November 5, 1937,
10:05 o'clock A.M.

Court convened pursuant to adjournment;
All parties present.

The Court: Are there any other ex parte matters or matters upon agreement to come before the Court? If not, you may proceed with the case on trial. Mr. Cleasby, resume the stand.

WILLIAM CLEASBY,
resumed the stand for further examination.

Further Cross Examination.

By Mr. Ryan:

Q. You testified yesterday that when you and the captain and the third mate were rowing from the "Denali" to the "Cyane" the current was shoving you over against the island. What island did you refer to?

A. More towards the reef of the island.

Q. You testified yesterday that it was shoving you towards the island. Which island did you refer to at the time?

A. Zayas Island.

(Testimony of William Cleasby.)

Q. Zayas Island?

A. Yes, sir.

Q. All right. Will you come down to this chart?

(Witness goes down to chart)

Q. Indicate on this chart, Petitioner's Exhibit 33, the location of the Coast Guard Cutter "Cyane" at the time that you were rowing from the "Denali" to the "Cyane".

A. You mean at first or last? First we could not row [2112] towards her at all.

Q. All right. Will you locate the "Cyane". She was there all the time, wasn't she?

A. She was on the outside of the wreck; on the eastern side of the wreck.

Q. And that you say was at 10:00 A.M. on May 19, 1935, is that right?

A. I said approximately.

Q. Yes. Well, mark there where you say is the location of the "Cyane".

A. Right here (drawing line on Petitioner's Exhibit 33).

Mr. Ryan: The witness drew a short heavy line, and I will put a line there with an arrow to it. At the end of the arrow is the letter "W" with a circle around it (draws on Petitioner's Exhibit 33).

Q. (By Mr. Ryan) Is that right?

A. Approximately, yes.

Q. The "W" points to where you say the "Cyane" was?

A. Yes, sir.

(Testimony of William Cleasby.)

Mr. Ryan: I will put the word "Cyane" underneath the "W" (writes on Petitioner's Exhibit 33).

Q. (By Mr. Ryan) Now, are you sure that that is where the "Cyane" was—

A. (Interposing) Yes, sir, approximately.

Q. (Continuing) —at about 10:00 A.M. on May 19, 1935?

A. I said approximately, yes.

Q. Now, the "Denali" at that time was where?

A. On this reef here (indicating on Petitioner's Exhibit 33).

Q. Indicating the circle or the point that says "Drys [2113] 12 feet". Is that right?

A. Yes, sir.

Q. That reef?

A. Yes, sir.

Q. Now, what direction is the "Cyane" from that reef according to your story?

A. Approximately east.

Q. You think that the "Cyane" is east as shown on that chart?

A. Yes, sir.

Q. Will you lay it down? Do you know how to use a parallel rulers?

A. I ought to.

Q. Then tell us what direction that is.

A. I said that she is laying approximately east of the wreck.

Q. Lay it down. Can you tell us from that chart what direction it is?

(Testimony of William Cleasby.)

A. Well, yes. It is east.

Q. Well, here is a pair of parallel rulers and here is a divider and use those on the chart.

A. I don't need any dividers (marks on chart).

Q. Do you want to lay it down on the table?

A. Yes, if you want it exact.

Q. Yes, I want it exact. Lay it down on the table. I will take this chart off the easel and lay it down on the table. Now I ask you to lay it down carefully on this flat table. On this tell me the direction of the "Cyane" from the "Denali" at the time that you were rowing from the "Denali" to the "Cyane". [2114]

A. (Using parallel rulers on chart) East by South by Half South.

Q. East by South $\frac{1}{2}$ South?

A. Yes, sir.

Q. Is that true or magnetic?

A. Well, that is magnetic.

Q. That is magnetic?

A. Yes, sir.

Q. What is it true?

A. 150.

Q. 150?

A. Yes, sir.

Q. What is that in points of the compass?

A. What is that in points of the compass?

Q. Yes.

A. What do you mean? In true points of the compass, is that what you mean?

(Testimony of William Cleasby.)

Q. Don't you know what a true direction is as distinguished from a magnetic direction?

A. Well, you asked me——

Q. (Interposing) Give me the true direction of the "Cyane" from the "Denali" when you were rowing from the——

A. (Interposing) I did.

Q. (Continuing) ——when you were rowing from the "Denali" to the "Cyane".

A. I did. 150 degrees true.

Q. What is it in points?

A. I cannot give you that offhand.

Q. Well, can you look at the compass rows and tell us? You [2115] know the box of a compass, don't you?

A. Yes, sir.

Q. What is 150 degrees true in points?

A. Well, this is plotted in magnetic and points and true degrees.

Q. You don't know what 150 degrees is in points?

A. You can catch it right here.

Q. That is all right. But you don't know, do you?

(Witness does not answer)

Q. Take the stand again, Mr. Cleasby.

(Witness resumes stand)

Q. Now, you were running against this current, were you?

A. Yes, sir. We were trying to.

Q. And it was the flood tide?

(Testimony of William Cleasby.)

A. Flood tide, yes, sir.

Q. And you were being set to the—the current at that time was setting you to the westward, wasn't it?

A. No.

Q. Well, if you were rowing East by South the current that you were running against was setting you to the westward, wasn't it?

A. No. It was setting slightly—not the westward. It was setting us in a general northerly direction, and we were trying to get south so as to get around the stern of the "Denali".

Q. Oh, I see.

A. And we were unable to row against it.

Q. In other words, the current that you were rowing against was one that was coming from the south, is that it?

A. Well, at that end of the wreck and the island, yes. [2116] The ship would deflect it some and that was the general direction of the current right in the channel itself.

Q. I see. In other words, the current that you encountered in rowing from the "Denali" to the "Cyane" is the very current which is shown by the arrows on this Chart 2828, isn't it?

(Witness does not answer)

Q. Come and look at the chart, and I will call your attention to the force and direction of the current as shown by United States Government Chart——

(Testimony of William Cleasby.)

A. (Looking at Petitioner's Exhibit 33) Yes.

Q. Yes.

A. Yes. You are about here in the channel (indicating on Petitioner's Exhibit 33). We are not over here where the arrows are; we are over here (indicating on Petitioner's Exhibit 33).

Mr. Ryan: Show that so that it will get into the record.

The Witness: We are over here, in here; we are not over here at all (indicating on Petitioner's Exhibit 33).

Q. (By Mr. Ryan) Yes, but the direction of that current was the direction which is indicated by these arrows over here in the middle of Caamano Passage, isn't that so?

A. In mid-channel of Caamano Passage.

Q. In other words, the current at that time was setting to the northward, isn't that right?

A. Inside of these rocks, yes. [2117]

Q. Yes.

A. In here (indicating on Petitioner's Exhibit 33).

The Court: The time was about seven hours after the stranding, was it?

Mr. Long: That is right.

Mr. Ryan: That is right.

The Court: Isn't that so?

The Witness: Yes, approximately seven hours after the stranding.

Mr. Ryan: All right. Would you take the stand again?

(Testimony of William Cleasby.)

(Witness resumes stand)

Q. (By Mr. Ryan) Now, when you were rowing from the "Denali" to the "Cyane", you and the captain and the third officer—you say that you picked up a couple of men from Obert's boat?

A. Yes, from Captain Obert's boat.

Q. Do you know the names of those men?

A. No, I don't know who they were. I don't remember who they were, I should say.

Q. How many men were there?

A. Why, I think that he gave us three or four.

Q. Didn't you in fact get two men from Obert's boat?

A. It might have been two men.

Q. Well, I would like your best recollection on it.

A. Well, that is my best recollection. I gave it to you first. I said about three or four men.

Q. How many men were there in Obert's boat, from Zayas Island to the "Cyane"?

A. Well, it is hard to say, but it was the heaviest manned [2118] boat, as the passengers were in that boat.

Q. It was the biggest boat that you had, wasn't it?

A. No, not the biggest; the same size as the rest of them.

Q. What was the capacity of the boat for passengers and crew, the boat in which you and the captain and the third mate were rowing?

(Testimony of William Cleasby.)

A. Thirty-five persons, if I remember right.

Q. And it is a pretty hard boat to row for three men in any kind of a current, isn't it?

A. Well, I would not say that.

Q. At any rate you say that this boat went out. How many boats went from the "Denali" to the beach before the "Cyane" ever came around there?

A. I think two of them.

Q. Two went over to the beach?

A. I am not saying for sure. I don't remember exactly.

Q. And then you lowered one lifeboat for you and the captain and the third mate to use in an emergency when you wanted to go, is that right?

A. No. They were all lowered at the same time.

Q. Oh, I see. You lowered three boats, is that right?

A. We lowered all of them.

Q. Yes. Well, you had a boat standing by for you and the captain and the third mate, didn't you?

A. No. The "Cyane" returned that boat to us because it was getting—because he said then that he didn't care to stand by any longer.

Q. Wait a minute, now. I am talking about now before the "Cyane" ever got there. I am talking about the early morning of May 19th. They hadn't got there yet. The [2119] situation was that you sent two boats ashore with the pilot and a lot of men, is that right—to Zayas Island?

(Testimony of William Cleasby.)

A. Yes, I think there were two boats that went there. I am not saying that for sure, though.

Q. And there was a boat available for you and the captain and the third mate, was there not?

A. At that time, yes.

Q. And that boat was on your port side amidships, wasn't it—down in the water?

A. Yes. That is the side on which we had our ladder out.

Q. And then when the "Cyane" came out there she circled around and started to come up on your port side, didn't she?

A. Yes, sir.

Q. And you had a man take the lines on this lifeboat on your port side and run the boat up forward on the port bow, didn't you?

A. You are getting mixed up in it.

Q. So that the "Cyane" would not crush the boat when it came alongside. Isn't that so?

A. No—yes, I think that is right.

Q. Well, there were only three men on the boat at that time, you and the captain and the third mate?

A. Oh, no. There was more than that then.

Q. They had gone ashore, hadn't they?

A. Not all of them. There were several men that stayed there.

Q. I see.

A. The chief engineer, the first assistant and the wireless [2120] operator.

(Testimony of William Cleasby.)

Q. I see. Now, when you and the captain and the third mate got into the lifeboat from the "Denali" you got into the lifeboat down the Jacobs ladder on the port bow, didn't you?

A. No, sir.

Q. Well, from where did you get into the lifeboat?

A. Right amidships.

Q. On the port side?

A. Yes, sir.

Q. And then you started out?

A. Yes, sir.

Q. Were you rowing?

A. I was helping, yes.

Q. And then the boat started out towards the "Cyane", is that right?

A. No. We tried to. We could not get around the wreck.

Mr. Ryan: That is all, Your Honor.

Redirect Examination.

By Mr. Bogle:

Q. Mr. Cleasby, was the "Cyane" anchored, or was she under way?

A. No. She kept under way. She could not lay to without any way on her at the different times.

Q. Was she in any one stationary spot, or was she shifting around?

A. She was shifting around.

Q. Did you at any time on this morning, and particularly [2121] at the time you left—you finally

(Testimony of William Cleasby.)

left the "Denali"—did you when you finally left the "Denali" actually look at your watch to get the exact time?

A. I probably did, but I don't remember it.

Q. Do you know now the exact time that you left the "Denali"?

A. It says eight o'clock.

Q. No, I say do you know what time you left the "Denali"?

A. No, I don't.

The Court: What was that answer?

(Answer read as follows: "It says eight o'clock).)

The Court: What says eight o'clock?

The Witness: I think that is what counsel told me.

Mr. Ryan: No. I beg your pardon, I did not. I never made any such statement.

The Court: The reason why the Court asked to have the answer repeated was because I understood the witness to say that on his previous testimony that he left the wreck about ten o'clock in the morning.

Mr. Bogle: That is right.

The Witness: That is what I figured that we did.

Mr. Bogle: Something was said about an earlier time, and I was trying to get his recollection on that.

The Court: Very well.

Q. (By Mr. Bogle) Mr. Cleasby, did you on this morning note the direction of the flood tide off the south end of the island—of Zayas Island?

(Testimony of William Cleasby.)

A. Well, I noted it to the extent that we could not row against it to get around the stern of the "Denali". [2122]

Q. You testified on cross examination that the tide was running—I think you said south in the channel.

Mr. Ryan: Now, please, that is not the summary of this witness' testimony, and I ask that leading questions not be put to the witness.

Mr. Bogle: That is not a leading question.

Q. (By Mr. Bogle) At 10:00 A.M., Mr. Cleasby, what direction was the tide running in Caamano Passage in the vicinity of the wreck?

A. Well, it was running to the northerly.

Q. To the northerly?

A. Yes. That is, in Caamano Passage?

Q. Yes, in Caamano Passage, that is what I mean.

A. Yes, sir.

Q. Do you know how the tide was running south of Zayas Island, outside of the passage?

A. You mean outside of the passage?

Q. Yes. Below the island.

A. Not at that time. I know since.

Mr. Ryan: I ask that counsel for petitioner not point with his finger at the chart and ask questions of the witness in that way, and I will ask that counsel be requested to stand back a little so that he won't inadvertently do that.

(Testimony of William Cleasby.)

The Court: That is denied. Counsel may in this instance call his attention to the exact location on the chart that he wishes to call his attention to.

Mr. Ryan: But he put his finger on a place on the chart and then took it away and then asked the witness a question, and in doing it that way we have no [2123] way of putting it in the record where counsel put his finger on the chart.

The Court: Have the place indicated.

Mr. Bogle: I shall get to that, Your Honor. I was coming to that.

The Court: Very well.

Q. (By Mr. Bogle) Now, the place on the chart where there are two figures in circles, one five and one seven, do you see those?

A. Yes, sir.

Q. South of Zayas Island?

A. Yes, sir.

Q. In what direction was the flood running in that vicinity?

A. In that vicinity she was running to the eastward.

Q. She was running to the eastward?

A. In that vicinity. That is way to the south—that is at the south end of the island?

Q. Yes, that is right.

The Court: The witness may resume the witness stand now.

Mr. Ryan: I didn't get those numbers that counsel was referring to.

(Testimony of William Cleasby.)

The Reporter: One five and one seven.

Q. (By Mr. Bogle) Did you notice the direction of the tide immediately after the stranding?

A. Immediately after the stranding—no, I could not tell you the exact direction because she was just running alongside of the ship, and to tell exactly what angle she was hitting on, it is pretty hard to say. You can tell it before she stranded, by the action on the ship [2124] more than afterwards in a case like that when the angle would not be exactly opposite.

Q. Well, if you don't know, Mr. Cleasby, I don't want to get any speculation from you. Mr. Cleasby, I didn't get clear yesterday just what watches the mates stood on this ship.

Mr. Summers: This is not proper redirect and we object to it.

Mr. Bogle: They went into it in great detail yesterday. In reading the record I cannot get quite clear yet just what watches they stood.

Mr. Ryan: The question of the watches of this witness was gone into on direct examination by Mr. Bogle at the very start. Then my cross examination was directed to the testimony that was brought out at that time by Mr. Bogle. That matter was covered on direct and cross, my cross referring to counsel's direct examination, and this is not proper redirect examination.

Mr. Bogle: I didn't ask him what watches the other mates stood. That was brought out on cross.

(Testimony of William Cleasby.)

I merely asked him about his own watch on my direct examination.

Mr. Ryan: Of course, he showed him every watch all the way back through the log books. He showed all the watches from the log books for the whole voyage, and the man testified—he said, “I stood this, and this other man stood that”, and that sort of thing. That was gone into on direct examination.

Mr. Bogle: The question was can you tell from the [2125] log book what watches you stood. That is all that I asked him.

The Court: Well, he may answer that. [2126]

Q. (By Mr. Bogle) What watches did the second and third mates stand?

Mr. Ryan: The same objection.

Q. What were their set watches?

Mr. Ryan: The same objection, on the ground that it is not proper redirect examination.

The Court: Overruled.

The Witness: Starting the day at midnight, the third officer would stand from midnight until 6:00 in the morning, relieved at 6:00 by the second mate, who stood until 8:00 o'clock. At 4:00 o'clock in the afternoon the third officer came on again and stood from 4:00 until 6:00, completing his eight hours in that 24. At 6:00 o'clock the second officer came on and stood until midnight, and that would complete his eight hours in the 24.

Q. On the 16th, 17th and 18th what watches or portions of watches did you stand?

(Testimony of William Cleasby.)

Mr. Ryan: If the Court please, that was gone into very fully on direct examination.

The Court: Unless there is some purpose, or some particular phase of it which is desired to be cleared up, I think so.

Mr. Bogle: I do want to clear up one phase of it. They went into it piecemeal. If it is necessary to recall him I would like to recall him to ask the one question, because I think it is something that is important.

The Court: In view of the objection you may recall him, and let the record show that he is recalled for the purpose of asking one question. [2127]

Q. (By Mr. Bogle) Will you look at the log book and tell me, if you can, what watches or portions of watches you stood on the "Denali" on May 16th, 17th and 18th, 1935.

Mr. Summers: That is objected to on the ground that he was examined on that on direct, and this tends to impeach the witness.

The Court: Objection overruled. The witness is recalled for this purpose.

Mr. Summers: I object not on the ground that it is not redirect, but on the ground that it is impeaching the witness.

Mr. Ryan: I want to add the further objection that the witness is not being asked if he knows what watches he stood, or his best recollection, he is being shown a document and, in effect, asked to read from it.

(Testimony of William Cleasby.)

The Court: Read the question. (Question read as follows:

“Q. Will you look at the log book and tell me, if you can, what watches or portions of watches you stood on the ‘Denali’ on May 16th, 17th and 18th, 1935.”)

Mr. Bogle: I will ask a preliminary question.

Q. (By Mr. Bogle) Mr. Cleasby, do you remember, without reference to the log book what watches you stood, if any, or portions of watches, on the 16th, 17th or 18th of May?

Mr. Ryan: We object to that.

The Court: The objection is overruled.

The Witness: On the 16th I didn't stand any watch. On the 17th I stood from 8:00 a.m. until noon, and I stood a watch that evening for about four hours, around [2128] 6:00 o'clock until it became dark, when I was relieved by the captain. I also stood on the 18th from 8:00 to 12:00 a.m. I think that was the full extent of my watches.

Q. Do you recollect whether you relieved the pilot for short intervals?

A. I used to do that regularly.

Mr. Summers: I object to that as leading, and also as going beyond the Court's permission.

Mr. Ryan: If the Court please, as to that last answer I would like——

Mr. Bogle: (Interposing) I will withdraw it.

Mr. Ryan: The portion about 8:00 a.m. to noon on May 18th, I would like to move to strike it out

(Testimony of William Cleasby.)

on the ground that it is now fully disclosed that the purpose of the question was to impeach this witness. He testified yesterday that he had no recollection whatever about that 8:00 a.m. to noon watch on May 18th, and that he couldn't say that he was on watch there at any time.

The Court: The objection and motion are overruled and denied.

Mr. Bogle: That is all, Your Honor.

The Court: Mr. Ryan, you may recross and further cross on this new matter that has been developed.

Mr. Ryan: No questions.

The Court: You may be excused from the stand. Call the next witness.

Mr. Bogle: Does Your Honor desire that Mr. Cleasby remain in court? [2129]

The Court: If there is no objection Mr. Cleasby may be excused from further appearing as a witness at this trial.

Mr. Ryan: No objection.

(Witness excused.)

ERWIN P. LARSON,

called as a witness on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. Long:

Q. State your full name, please.

A. Erwin P. Larson.

Q. Where do you live, Mr. Larson?

A. In Seattle.

Q. Are you a married man?

A. Yes, sir.

Q. What is your business?

A. Well, I am a seafaring man.

Q. Where were you born, Mr. Larson?

A. Sweden.

Q. Are you an American citizen?

A. Yes, sir.

Q. What license, if any, do you hold issued by the United States Steamboat Inspection Service, Department of Commerce?

A. Second mate ocean, any tonnage.

Q. Is that referred to as second mate's, unlimited?

A. Yes, sir. [2130]

Q. Have you that license with you?

A. I have. (Witness produces license.)

Mr. Ryan: No objection to reading that into the record the same as before.

Mr. Long: The same as we have done with the previous licenses.

(Testimony of Erwin P. Larson.)

The Court: The reporter will incorporate that into the record at this place.

(License copied into the record as follows:

(First page)

“C. Form 871	File No. L 16231
Serial Number	Issue Number
55967	1, 1

United States Department of Commerce
Steamboat Inspection Service

License to Mate of Ocean or Coastwise Steam
and Motor Vessels

This is to certify that Erwin P. Larson having given satisfactory evidence to the undersigned United States Local Inspectors, Steamboat Inspection Service, for the district of Seattle, Wash., that he is a skilful navigator and can be intrusted to perform the duties of Second Mate on Steam and Motor Vessels of any gross tons, upon the waters of is hereby licensed to act as such Second Mate on Steam and Motor Vessels for the term of five years from this date. Given under our hands this 11th day of January, 1934.

WILLIAM M. CAMPBELL

Acting U. S. Local Inspector
of Boilers.

DANIEL B. HUTCHINGS

Acting U. S. Local Inspector of Hulls
Form 1108 [2131]

(Testimony of Erwin P. Larson.)

(Second page)

Signature of holder of license Erwin P.

Larson

Date of birth March 8, 1898

Place of birth Sweden

Naturalized

Date of Naturalization Feb. 13, 1932

Place of Naturalization Seattle, Wash

By what Court District

Naturalization Certificate No.....

Present address 2831 W. 73rd, Seattle

Passed visual examination Yes, Nov. 13,
1933

Visual examination on file in the office of
Seattle, Wash.

DANIEL B. HUTCHINGS

WILLIAM M. CAMPBELL

Acting U. S. Local Inspectors issuing this
license.)

Passed Examination for Color Blindness
at Seattle, Washington, Nov. 13, 1933

DANIEL B. HUTCHINGS

WILLIAM M. CAMPBELL

Acting Local Inspectors."

Q. (By Mr. Long) How many years have you
been going to sea, Mr. Larson?

A. Since 1913.

Q. Just tell us generally what your experience
has been at sea.

(Testimony of Erwin P. Larson.)

A. Steam and sail. I spent about seven years in sailing ships, and the rest in steam.

Q. Did you sail in Swedish ships?

A. Yes. [2132]

Q. And American ships?

A. Norwegian, English and American.

Q. When did you come to this country?

A. I was in this country the first time in 1917, but I left again. I was sailing at the time and I never settled down.

Q. How many years have you been sailing to Alaska?

A. Since 1922, off and on.

Q. How old were you when you first went to sea?

A. 15 years old.

Q. What vessels of the Alaska Steamship Company have you served on as second officer?

A. On the S.S. "Oduna", as a second mate, and the S.S. "Oduna" as a third mate; and on the "Cordova" as second mate for two seasons, and the S.S. "Denali".

The Court: In what capacity on the "Denali"?

The Witness: As second mate.

Q. (By Mr. Long) You were assigned to the steamer "Denali" in May of 1935?

A. I was.

Q. As what officer?

A. As second mate.

Q. Who assigned you to that ship?

A. Mr. Tracy.

(Testimony of Erwin P. Larson.)

Q. Where were you employed during the winter of 1934 and the spring of 1935?

A. I was employed in the West Seattle yard, except for a short time that I was in the hospital that winter.

Q. Were you present at the West Seattle yard when the steamer "Denali" underwent her annual inspection? [2133]

A. I was.

Q. About when was that, do you remember?

A. Well, I have got the time cards here for the time.

(Witness produces documents.)

Q. Just tell us about what date that was.

A. I was there for seven days, getting her ready for inspection.

Q. In what month was that in 1935?

A. In January, 1935, and we had the inspection the 29th and the 31st of January, according to the time cards.

Q. Were you present in the courtroom when Capt. Kelly, United States Steamboat Inspector, testified?

A. I was.

Q. Did you see him on board the "Denali" making the inspection?

A. I did.

Q. Did you do anything to assist him in that inspection, in connection with this ship?

(Testimony of Erwin P. Larson.)

A. Well, I was appointed by the captain there at the time to assist Capt. Kelly with the inspection.

Q. What did you do with reference to any assistance you personally rendered Capt. Kelly?

A. Well, I did everything that he wanted me to do; test the fire extinguishers, the hoses, all the life-boat equipment, and different things, according to what the Inspectors wanted.

Q. Did you do anything in connection with the pilot house equipment, with Capt. Kelly?

A. Well, I was in the pilot house at the time Capt. Kelly asked for the deviation book, and I got the deviation [2134] book for him out of the chart room and handed it to him.

Q. That was the deviation book for what years?

A. It went back two or three years, the deviation book, as it always does. They always keep the deviation book on the ship for years. It never leaves the ship.

Q. Did Capt. Kelly return those things to you?

A. He did after he was through, and I put them back in the drawer in the chart room.

Q. Did you stay in the pilot house while he made his inspection there?

A. No; I went back in the chart room.

Q. What day did you join the "Denali", and where, in 1935?

A. I joined her as second mate on May 13, 1935, but I was there the day before, sent over from the yard to get all the equipment on board.

(Testimony of Erwin P. Larson.)

Q. You say Mr. Tracy appointed you?

A. Yes.

Q. About how many days before May 13th were you informed of your appointment as second mate of the "Denali"?

A. Three or four days.

Q. What day did you join the "Denali", what time of day did you join the ship on May 13th?

A. Around 6:00 o'clock in the morning.

Q. Just tell us in your own words what you did when you went aboard that day; what were your immediate duties?

A. Well, after I got on board I changed clothes and went up in the pilot house, and the third mate was there, and we commenced to check the steering gear, the whistle, the telegraph, the speaking tube, and things.

Q. Just tell us how you tested the telegraph?

[2135]

A. Why, you blow down in the speaking tube to the engine room down below and tell them you are going to test the telegraph. The engineer knows what is going on, and he will answer the same thing as you put on the telegraph. If you put it full ahead he will come back with full ahead, and if you put her full astern he will come back with full astern, and then stop, and slow ahead, whatever you want to do.

Q. In other words, you would move the handle of the telegraph and he would answer?

(Testimony of Erwin P. Larson.)

A. Absolutely.

Q. In what condition did you find the telegraph?

A. Fine working order.

Q. You said you tested the steering gear?

A. Yes.

Q. Tell us what that test was, and who made it?

A. Me and third mate and the mate. One man would put the wheel hard over in the pilot house, and one man in back aft to see that the rudder is hard over, the quadrant.

Q. The quadrant, you say?

A. Yes.

The Court: Not too fast, Mr. Larson, and speak as distinctly as you can.

The Witness: All right.

Q. (By Mr. Long) Take your time. Who was back aft in connection with the inspection of the steering gear, do you remember?

A. Well, the mate was back aft there, and the third mate and me was in the pilot house, and I went half way back on the boat deck to talk to the mate. [2136]

Q. In what condition did you find the steering gear to be?

A. Fine working order.

Q. Had it been greased and checked over?

A. Oh, yes.

Q. Was the whistle tested?

A. Yes, sir.

Q. In what condition did you find the whistle?

(Testimony of Erwin P. Larson.)

A. Fine.

Q. And the speaking tubes?

A. The same thing.

Q. Did you make any examination of any further equipment that morning at West Seattle, if you remember?

A. No; I didn't test anything; except the captain told me to get the pelorus out of the pilot house and put it on top of the bridge, on the stand. That is all.

Q. Where is the stand located with reference to the standard compass?

A. Standing alongside of it, approximately three to four feet.

Q. What is it made of, do you know; what material?

A. Brass.

Q. What did you do pursuant to those orders from the captain?

A. I took the pelorus out of the pilot house and took it up on the top of the bridge.

Q. Where did you put it?

A. In the stand, in the gimbals.

Q. Did you stay up on the top of the bridge where the standard compass was when Capt. Healy made any use of the pelorus? [2137]

A. No; I didn't stay up there.

Q. Do you know what he did up there?

A. I didn't see him do it.

Q. Very well, if you didn't see him. What time did you leave West Seattle yard that morning?

(Testimony of Erwin P. Larson.)

A. Shortly after 7:00 some time.

Q. Were you on the bridge, do you remember?

A. No; I was back aft taking in the lines.

Q. I mean after you got clear of the dock.

A. After we got clear of the dock, yes.

Q. When the ship leaves the dock where is the second mate's station, making dock or leaving the dock?

A. Well, me and the third mate take turns about that. Sometimes I am back aft and sometimes I am on the bridge. It all depends on who wants to go back aft or who wants to stay on the bridge.

Q. After you got the ship clear of the dock at West Seattle where did you go and what did you do?

A. I went up on the bridge for a while, until we got across to Arden Salt Dock.

Q. Who was handling the navigation of the vessel at that time, from West Seattle to the Arden Salt Dock?

A. The captain.

Q. What course were you steering? I do not mean the point course, but was it magnetic or otherwise?

A. I couldn't say that. I wasn't there when we left the dock. I just got there after we left, so I couldn't tell.

Q. About what time did you arrive at Arden Salt Dock, if you remember?

A. Somewhere around 8:00 o'clock. [2138]

(Testimony of Erwin P. Larson.)

Q. Do you recall how long the vessel laid at Arden Salt Dock that day?

A. Until sometime in the afternoon, when we left and went to Smith's Cove.

Q. Is that otherwise referred to as Pier 40?

A. That is the same thing.

Q. Generally, what are your duties aboard the "Denali" as second officer?

A. Practically the same as the third mate, except I have the upkeep of the pilot house and the equipment.

Q. What equipment do you refer to?

A. The charts and all books relating to navigation.

Q. You mean the navigational equipment?

A. Yes.

Q. You have been referred to here in the course of this trial as the navigating officer. Tell us, please, what duties you have with particular relation to navigation, different from the other officers?

A. There is no difference between me and the third mate, except, as I said, that I took care of the pilot house equipment. All there is to the navigating officer—well, I don't know—they call the second mate the navigating officer—I never do any navigating, except the same as the third mate.

Q. Who is the navigating officer on your watch?

A. The captain, of course.

Q. Who is the navigating officer on the opposite watch?

(Testimony of Erwin P. Larson.)

A. The pilot.

Q. Now, Mr. Larson, just tell us what examination you made of the ship's navigating equipment. By the way, where [2139] was it put aboard?

A. The equipment?

Q. Yes.

A. I took the equipment on board in West Seattle the day before we left there. The system we have in them ships is that when every ship arrives in the fall like they do and tie up, all the equipment is put in a big box and nailed up, and it is marked on the top what ship it belongs to, and is put in a storeroom, locked up the whole winter, except when anybody from the ship wants to get the equipment out.

Q. Did you get the navigating equipment, or the ship's equipment?

A. I did.

Q. Did you put it aboard the ship?

A. I did.

Q. When did you make a check of that equipment and go through it?

A. I checked the box the same day I got it on board. There is always a list—the man that was there before and put the box away, he left a list of the equipment that was in the box when it was put in the box in the fall, and all you have to do is check over that list to see that everything is in the box when you take it out of there. And then we check it over again to see if there is anything else that we need or that we want for the next season.

(Testimony of Erwin P. Larson.)

Q. Mr. Larson, were the ship's charts in the box?

A. Oh, no. The ship's charts are always kept on board the ship. [2140]

Q. You spoke of navigating equipment; what equipment was in the box that was placed ashore, and that you put back aboard the ship?

A. The azimuth mirror, the parallel rulers, dividers, and all the books relating to the navigation of the ship, like the azimuth tables, Coast Pilots, and things like that. Of course there are things we have to order, like nautical almanacs, because of course they are new every year, and tide tables and current tables, and like the Canadian light list, and the American light list, and the Canadian tide tables—they are supplied free of charge.

Q. We will get to that later, Mr. Larson. I want to get first the equipment that you put aboard from the store room, belonging to the "Denali". Was the pelorus in that box?

A. No. It is always kept on the ship, the same as the compasses. You never take the pelorus off the ship—it is too bulky.

Q. Did you make a check of the ship's charts or navigating books, nautical publications, etc.?

A. I did.

Q. Where were you when you did that?

A. Well, I checked the equipment we had in the box. We had the azimuth tables and Coast Pilots, and American and British Columbia, and the rest of the equipment we got from Pier 2, like tide tables

(Testimony of Erwin P. Larson.)

and light lists, and almanacs we had to order for that year, which we always do.

The Court: I understood all that was in the box.
[2141]

Mr. Long: No, Your Honor. We are getting along too fast.

The Court: And also, he is repeating something he has already said.

Mr. Long: That is correct. He didn't quite get my question.

Q. (By Mr. Long) Let us take the charts first, and your publications. Where were you when you checked those, or where was the ship?

A. We started after we were over at the Salt Dock.

Q. Tell us what you did with reference to checking your charts. Where were they?

A. In the chart room, in the drawers and in the lockers. The way we check them we have the latest catalogues——

Q. What catalogues?

A. Chart catalogues, Canadian and American, and we will take the charts out on the chart table and one man will sing out the numbers that are there and the other man will check them off on the catalogue.

Q. Who assisted you in doing this?

A. Mr. Lawton, the third mate.

Q. What charts did you have? I do not mean by number, but what areas did they cover?

(Testimony of Erwin P. Larson.)

A. We had the full set from Seattle; Puget Sound, British Columbia, Southeast and Southwestern Alaska, and Bering Sea.

Q. Did you in checking your charts make any notes for requisitioning or buying new charts?

A. Yes; I made some requisitions for some new charts, maybe a dozen or a dozen and a half. [2142]

Q. Handing you, Mr. Larson, Petitioner's Exhibit No. 47, the last page dated May 13th, which is a requisition, I will ask you if that shows the numbers of any charts, and if you know what charts they were?

A. Well, I cannot remember the locations of the charts, but those are the charts I ordered. I got them all.

Q. How do you do that, Mr. Larson? You check through your charts and order these charts?

A. Well, we check through the chart catalogues and through the "Aid to Mariners".

Q. How do you go about getting those that you want?

A. I hand the requisition, my list, as I call it, in to the chief officer, and he makes out the requisition for all the things that belong to the ship.

Q. Was that Mr. Cleasby?

A. Yes.

Q. Is this Mr. Cleasby's signature here (showing)?

A. I think it is, yes.

Q. Did you receive those charts before the ship sailed?

(Testimony of Erwin P. Larson.)

A. I did.

The Court: Did you receive them on board the ship?

The Witness: Yes; we did.

Q. I notice here there is a requisition for navigating dividers, a protractor, and parallel rulers, 18 inch, which is apparently crossed off. Will you tell us whether you got those instruments, and how?

A. I saw Mr. Murphy the day after this requisition was handed in, and he told me to go to West Seattle and get it out of the storeroom, because we always have spare equipment there, and he told me if I didn't find what I [2143] wanted to go up to an instrument store and get it.

Q. Did you find what you wanted at West Seattle?

A. I got everything I wanted there.

Q. I notice this set of parallel rulers is referred to here as 18 inches; did you have any other set of parallel rulers already on board?

A. We had a big pair, but it was a little too big, in my opinion, for small work, and I wanted a different size.

Q. Referring again to Petitioner's Exhibit No. 47, also a requisition, under date of May 13th, it lists 2 only American tide tables, Pacific Coast; 2 only American current tables, Pacific Coast, and 2 only, Nautical almanacs. Did you order those?

A. Yes.

Q. Did you receive them aboard the "Denali" before you sailed?

(Testimony of Erwin P. Larson.)

A. I did.

Q. Before the "Denali" sailed did you receive any "Notice to Mariners"?

A. Yes; I did.

Q. What are "Notice to Mariners"?

A. Well, it is a small pamphlet printed by the United States Government, and the Canadians have the same thing, and they are supplied free of charge to any ship and every ship.

Q. Where do you get those?

A. Well, at the Alaska Steamship Company. Each ship has got its own mail locker on Pier 2.

Q. A mail box, is that what you call it?

A. Well, it is quite a big box, about 24 x 24 or 20 x 20. [2144] All the mail for each ship is always put in the same box.

Q. What did you obtain from there?

A. I got all the mail for the ship, including the "Notice to Mariners", American and Canadian, and the light list and tide tables, which are supplied free of charge by the company. I don't know who supplies them, but they are always supplied to the ships. You do not have to order them.

Q. What other publications were aboard the vessel as part of her equipment? [2145]

Q. Now, what other publications were aboard the vessel as part of her equipment, generally? I don't mean to go into all the detail of it, but just generally?

(Testimony of Erwin P. Larson.)

A. Well, she had one Pacific Coast Pilot; two Alaska Pilots and one British Columbia Pilot, printed by the United States Government.

The Court: In this answer of yours you are referring to records or books or publications, are you?

The Witness: Well——

The Court: (Interposing) Just say yes or no.

The Witness: Yes, sir.

Q. (By Mr. Long) Did you have a bearing board as part of the navigating equipment?

A. Yes, sir.

Q. What kind was it, sir?

A. A standard Hanson bearing board.

Q. How about the publications—the navigation lists and those required by the Steamboat Inspectors, were they aboard?

A. Yes, sir.

Q. And azimuth tables?

A. Yes, sir.

Q. Any logs, log books or deviation boards on board?

A. Yes, sir.

Mr. Ryan: We object to that as being leading, if Your Honor please.

The Court: Yes.

A. Yes, sir. Navigation books and log books and deviation books.

Mr. Long: It is leading, that is true, but it is [2146] difficult to remember all these details. I agree with that, Your Honor, that it is leading,

(Testimony of Erwin P. Larson.)

but I want to direct his attention to these to refresh his memory.

Mr. Ryan: I think it would be better to exhaust the witness' own knowledge first.

The Court: Ask him if there was anything else.

Mr. Long: Yes.

Q. (By Mr. Long) What else did you have there with reference to navigation equipment on board—publications, and so forth?

A. About everything relating to the navigation of the ship; the Coast Pilots—

The Court: (Interposing) You have said that. Ask him if he had anything else.

Mr. Long: What can you say, Mr. Larson, as to whether the "Denali" was properly and fully supplied and equipped with all the navigating documents, charts, Hydrographic publications, light lists and notices to mariners, and similar publications, at the beginning of this voyage?

A. Everything.

Q. And were they up to date?

A. Yes, they were up to date. They must be up to date—the notices to mariners must be up to date because they come out every week or every seven days.

Q. Now, the notices to mariners, what was done with those aboard the ship? Just explain to the Court how they are handled.

A. Well, on a ship like the "Denali" and on all Alaska ships running to Alaska on a certain trade

(Testimony of Erwin P. Larson.)

like that, we [2147] have a book for that purpose in which we put all the notices to mariners relating to Puget Sound, and the same thing for those issued by the Canadian Government for the British Columbian waters, and for Southeastern and Southwestern Alaska. You put out certain pieces of the pamphlet and you glue them in this book for that reference.

The Court: Did you say "for further reference"?

The Witness: Yes, sir.

Q. (By Mr. Long) And did you do that in this instance?

A. Yes, sir.

The Court: At this time we will take a five minute recess.

(Recess)

The Court: Resume the stand, Mr. Larson, and you may continue with your examination, Mr. Long.

Q. (By Mr. Long) Now, Mr. Larson, you say that you got the notices to mariners at Pier 2. Can you tell us what period of time those covered that you secured?

A. From the time that the ship tied up in the port until the time that we left.

Q. Now, you haven't mentioned patent logs or taffrail logs. Did you have patent logs or taffrail logs on board the ship?

A. Yes, three of them.

Q. Do you remember what kind they were?

(Testimony of Erwin P. Larson.)

A. One of them—two of them was Walker logs. I know that. I don't know the name of the third one. [2148]

Q. How about the leads and sounding lines, and so forth?

A. Yes. We had patent sounding lines and hard lead deep lines.

Q. Did you have the latest light lists?

A. Yes, sir.

Mr. Summers: We object to that. That is leading.

Mr. Long: Yes, I know it is leading, but—

The Court: (Interposing) Try to avoid leading questions.

The Witness: We were supplied those from Pier 2 free of charge.

The Court: The witness should have in mind that when a question is asked, he should consider the specific questions—the specific form of it. Counsel cannot use words which suggest to you the answer that he wishes you to give.

The Witness: I see.

The Court: So you try to make your answers as accurate and as complete and as full as you can.

The Witness: All right, Your Honor.

Q. (By Mr. Long) Did you have any instruments aboard taking observations of the sun?

A. An azimuth mirror and pelorus.

Q. What other instruments did you have, or did the officers have?

(Testimony of Erwin P. Larson.)

A. I have got my own sextant, like any other officer would have.

Mr. Ryan: I cannot understand it.

The Witness: I have got my own sextant like any other officer has. [2149]

Mr. Ryan: I still cannot understand the answer. Will you read it, Mr. Reporter?

(Answer read)

The Court: The trouble is with his pronunciation of the word "sextant". Try to be distinct, will you, please?

The Witness: Yes.

Q. (By Mr. Long) Now, tell us, whether you secured the ship's chronometers, and if you did, where?

A. I got the clocks belonging to the ship from the store room at West Seattle, and the chronometer was brought aboard at Pier 2.

Q. Now, were you aboard the vessel, Mr. Larson, while she was shifting around the harbor at any time before leaving?

A. On every move that she made.

Q. Now, tell us what you did with reference to any check of the compasses.

A. Well, the captain instructed me to check the compass at every heading of the docks.

Q. And what did you do?

A. I did that.

Q. Both compasses or one?

A. Well, I took the heading out of the standard compass and laid it out on the chart, and I com-

(Testimony of Erwin P. Larson.)

pared the two compasses, the steering compass and the standard.

Q. And what did you find with reference to the accuracy of the compasses?

A. You mean the standard compass?

Q. Yes, and the steering compass—both of them.

[2150]

A. I never found any big deviation; maybe half a degree to a degree.

Q. And what did you find the result by comparing the standard compass and the steering compass?

A. Maybe a degree and a half or two degrees.

The Court: On which one now?

The Witness: On the steering.

The Court: On the steering?

The Witness: Yes.

The Court: The last answer refers to the deviation on the steering compass?

The Witness: Yes.

Q. (By Mr. Long) Did you make any inspection of the compasses with reference to their physical condition?

A. I did.

Q. Just tell us what you did.

A. I saw that there were no bubbles in them and they were free, working free in the gimbals.

Mr. Ryan: What was that answer?

The Court: He said that he showed there were no bubbles in them, and that they were working free in the gimbals.

(Testimony of Erwin P. Larson.)

The Witness: I saw that there were no bubbles in them.

Q. (By Mr. Long) Did you examine the compass cards?

A. Yes. They were nice and clear.

Q. Were there any deviation cards posted on the ship?

A. Yes, sir.

Q. Where were they posted?

A. In the chart room. [2151]

Q. Do you remember their date?

A. No, I don't remember the date. It was 1933 some time. I cannot remember the date. Some time during July in 1933.

Q. While you were on the vessel and she moved about the various docks, what, if anything, did you observe Captain Healy doing in connection with the taking of any bearings?

A. Oh, I didn't see him taking the bearings exactly, but I know that he was up on top of the pilot house taking bearings.

Q. Did you report to Captain Healy your findings, the result of your observations on the compasses?

A. I did.

Q. As to their condition?

A. I did.

Q. What did you report to him?

Mr. Ryan: Just a minute. If that report is in writing, produce the report.

(Testimony of Erwin P. Larson.)

Mr. Long: It was not in writing.

The Court: Ask him whether it was or was not in writing.

Q. (By Mr. Long) Was it in writing?

A. No.

Q. Just tell us what you reported to Captain Healy.

A. I reported to Captain Healy that I was satisfied in my own mind that the compasses were in good working order.

Q. Now, Mr. Larson, do you recall on what date the vessel left Pier 2?

A. Yes. [2152]

Q. What date was that, and the time?

A. May 16th, shortly after 5:30 or 5:40 in the morning.

Q. Were you on the bridge?

A. I was on the bridge, yes, sir.

Q. And who else was there?

A. The captain and a quartermaster.

Q. And where did the vessel go?

A. It backed out from Pier 2 and proceeded out towards Four Mile Rock, and from Four Mile Rock out towards West Point, where we stopped and——

Q. (By Mr. Long, interposing) Just a minute. That is all I asked you.

The Court: Four Mile what?

Mr. Long: Four Mile Rock.

The Witness: Four Mile Rock.

Mr. Long: That is a point.

(Testimony of Erwin P. Larson.)

The Court: R-o-c-k?

The Witness: Yes, sir.

Q. (By Mr. Long) What did you do when you got off West Point?

A. We stopped.

Q. Now go ahead and tell us what you did. Did you take any bearings, or did you do anything with relation to taking any bearings?

Mr. Ryan: I object to that as highly leading.

Mr. Long: It is.

Mr. Ryan: I have made this objection time and time again, and I insist upon it.

The Court: Sustained.

Q. (By Mr. Long) What did you do then, Mr. Larson? [2153]

A. We stopped the vessel, or the captain stopped the vessel, and the powder boat came alongside, and the captain instructed me that he was going to take some bearings, and I got the azimuth mirror up and I got my clock or my watch out for local time, and we headed that over towards the west shore where we started to take bearings, on West Southwest, and we swung all around to Northeast, which took us approximately an hour—from seven to shortly before eight—to a couple of minutes before eight o'clock.

Q. What was the condition of the weather then?

A. Clear.

Q. Was the sun out?

A. Yes, sir.

(Testimony of Erwin P. Larson.)

The Court: Keep your voice up. You see, in this room we hear everything that we should not hear, and we cannot hear the things that we have got to hear.

The Witness: I will try to.

The Court: Speak every word clearly and distinctly.

The Witness: Yes.

Q. (By Mr. Long) You say that you swung it and took bearings from South Southwest or West Southwest to Northeast. You took azimuth bearings. Now, you took azimuth bearings. Now, just tell us what you and Captain Healy did up there in your own words.

A. The Captain—he took his separate bearings on each point, and I took my separate bearings on each point, and we started on West Southwest and swung her around right from—from West to South until we got over to [2154] Northeast.

Q. And what instruments were you using to take these bearings?

A. The azimuth mirror.

Q. And what are the bearings called that you took?

A. The bearings of the sun.

Q. And what did you do with the information thus secured?

A. Well, after we got through taking the bearings we went down in the pilot house and figured out the bearings, and after that we marked the deviations in the deviation book.

(Testimony of Erwin P. Larson.)

Mr. Ryan: May I have that answer read?

The Court: Read the answer.

(Answer read)

Q. (By Mr. Long) Did you take your bearings separate from Captain Healy?

A. I did—sure.

Q. And did you make any comparison of your calculations and deviations as secured with those secured and calculated by Captain Healy?

A. I did. They compared very closely to Captain Healy's.

Q. Now, who was in the bridge—in the pilot house, I should say, while you were taking these bearings?

A. Well, the quartermaster. I don't know his name, the quartermaster and the third officer.

Q. And what was the third officer doing?

A. We had to have somebody to handle the telegraph, and he was handling the telegraph by orders of the captain. If we went slow ahead, or stopped, he handled it accordingly. [2155]

Q. Now, Mr. Larson, were the deviations secured and as entered in the azimuth book—were your deviations entered separately from Captain Healy's? Or both together, or tell us how it was done?

A. He handled his own observations or bearings, and I handled my own—he entered his own observations or bearings and I entered my own.

(Testimony of Erwin P. Larson.)

Q. Now, what deviations did you find, Mr. Larson, on the various headings? I don't mean to say each detail heading, but generally speaking.

A. Well, from west southwest up towards the north she was practically magnetic.

Q. What do you mean when you say, "practically magnetic"?

A. Well, half a degree or three-quarters of a degree.

Q. Yes. Go ahead.

A. And was so westerly, and when she dropped north, she was magnetic on the standard. Over towards the northeast she commenced to get easterly deviation.

Q. All right. What was the maximum deviation you found, and where was it?

A. Oh, close—on the northeast—close to two degrees.

Q. Tell us, Mr. Larson, why you took courses—why you took your deviations or your azimuths over that area or direction of the compass, if you did take them?

A. Well, that was for the purpose of checking the compass or taking the bearings on all the courses that we would be needing going to Alaska at that time.

Q. Is that portion of the compass quadrant from south—what was your first one?

A. West Southwest to Northeast. [2156]

(Testimony of Erwin P. Larson.)

Q. Is that portion of the compass quadrant from West Southwest to Northeast—did that cover all the courses that you would steer going to Alaska?

A. Yes. It takes in pretty near half of the compass.

Q. And from your experience, Mr. Larson, if you have no material deviations in that area or on that portion of the compass of which you took observations or deviations, what would you expect on the opposite points?

A. Well, not any more on the other side of the compass.

Q. And as a result of these observations and deviations thus secured, what is your opinion as to what, if any effect, the cargo had on the compasses—the cargo that you had loaded?

A. The cargo did not affect the compasses.

Q. Is it possible to determine before loading cargo what, if any, effect it will have upon the compasses?

A. Oh, no. Nobody can do that.

Q. How can you determine the effect, if any, that the cargo has upon the compasses?

A. After the ship is loaded, you mean?

Q. Yes. How do you do it?

A. Well, we always have to take azimuths if we are loaded or not. We always take an azimuth on the different headings if she has got a cargo on board or not.

(Testimony of Erwin P. Larson.)

Q. Were there any standing orders given the Steamship "Denali" with reference to *take* azimuths?

A. Yes, sir.

Q. Tell us what those were.

A. There was a standing order from the master that an azimuth must be taken on every heading when possible. [2157]

Q. Is that the universal custom on all ships?

A. On all ships, yes, sir.

Q. Now, did you make any comparisons of the deviations that you obtained with previous deviation books? Let me ask you this first, were there any previous deviation books on the ship?

A. Yes, sir.

Q. And did you make any comparison?

A. Yes. I looked at them.

Q. How did they compare, generally?

A. Pretty closely, about a half a degree, that is all.

Q. Now, on this voyage and before the stranding, were there any azimuths taken by yourself?

A. We took azimuths on every heading when it was possible—when the sun was out.

Q. I see. What is the best time of day to take azimuths?

A. Oh, around—from 7:00 to 10:00 o'clock.

Q. In the morning?

A. In the morning, and from 3:30 to 7:00 in the evening. That is, if the sun is not too low, of course. It all depends on the time of the year.

(Testimony of Erwin P. Larson.)

Q. I see. Generally speaking the heavens are usually taken during the morning or during the afternoon late, is that right?

A. During the morning and during the afternoon late, yes, sir.

The Court: Well, that is the only time when you have sunlight with which to take them by, is that not right?

The Witness: No. We have sunlight in the middle [2158] of the day, too, but as a rule we never take them when the sun is too high.

The Court: By that answer that you gave just before the Court asked this question, when you said early in the forenoon and late in the afternoon, what time do you mean by that?

The Witness: From approximately seven to about ten-thirty in the morning, and from three o'clock in the afternoon to seven.

The Court: Why during those hours instead of later hours in the forenoon and earlier hours in the afternoon?

The Witness: Because in the morning before that the sun is too late.

The Court: And what about after that in the morning—after 10:30?

The Witness: Well, after that the sun is too high.

The Court: All right. That is sufficient. Proceed.

(Testimony of Erwin P. Larson.)

Q. (By Mr. Long) Now, what time on the 16th did you go on watch, and where was the vessel at that time, if you recall, approximately?

A. I went up on watch—I think I was called around a quarter of five, and then I had my coffee and went on the bridge when the ship left Pier 2.

Q. And what watch did you stand that day—that evening?

A. You mean in the morning, do you?

Q. Yes, in the morning first.

A. Or in the evening?

Q. I beg your pardon?

A. In the evening? [2159]

Q. All right, in the evening.

A. From six to twelve.

Q. From six to twelve midnight?

A. Yes, sir.

Q. And with what other officer did you stand that watch?

A. I stand that watch with the captain.

Q. Captain Healy?

A. Captain Healy.

Mr. Ryan: What is that?

The Witness: Captain Healy.

The Court: That was the other officer with whom he stood watch.

Q. (By Mr. Long) When were the watches set on the “Denali”—the sea watches, do you remember?

A. Well, the sea watches, so far as the mates are concerned—

(Testimony of Erwin P. Larson.)

Q. (Interposing) When were they set, that is the question that I asked you.

A. That morning? When I went on my watch that morning?

Q. Yes. What watches did you stand at sea on the "Denali"? Just tell us.

A. Well, my watch at sea was from six to eight in the morning, and from six to twelve in the evening.

Q. How many hours a day in twenty-four.

A. Well, that is eight hours.

Q. And what watch did the third mate stand?

A. He stood from 12:00 o'clock midnight until 6:00 in the morning, and from 4:00 to 6:00 in the afternoon.

Q. How many hours a day did he stand?

A. Eight hours.

Q. Now, Mr. Larson, tell us, if you will, how the ship made [2160] her courses from the time that you left Seattle and while you were on watch, of course.

A. Fine.

Q. Did you take any four point bearings on any objects or anything like that?

A. Yes, sir.

Q. How did the courses check out with reference to being magnetic or otherwise?

A. Fine.

Q. Did you experience any difficulty with your steering gear?

(Testimony of Erwin P. Larson.)

A. Not a bit.

Q. Or with any of the ship's equipment?

A. No, sir.

Q. Did you observe or did you find any deviations of the compass that had been determined on your swing at West Point?

A. No. I took azimuths and they compared closely with the ones that I took at West Point.

Q. What do you mean by "closely"?

A. Inside of one-tenth of a degree, or two-tenths of a degree—so little—so that it don't amount to nothing.

Q. How close can a helmsman steer—can he steer a degree?

A. Well, you can tell him to steer a degree, but he would not be able to keep her on a degree.

Q. How many degrees are there in a compass circle?

A. 360.

Q. And how many points?

A. 32. [2161]

Q. How many degrees in a point, approximately?

A. Oh, around 11 or a little better.

Q. And when you speak of a quarter point and an eighth point, how many degrees in a quarter point, approximately?

A. Two and three-quarters or three.

Q. And in an eighth of a point is how many degrees?

(Testimony of Erwin P. Larson.)

A. In an eighth of a point how many degrees?

Q. Yes, approximately.

A. Approximately two degrees.

Q. And what was the practice on the "Denali", and on the other vessels of the Alaska Steamship Company, to steer by points or degrees?

A. Well—

Q. (Interposing) What orders did you give the helmsman with reference to steering, in points or degrees?

A. Oh, in points you give him on the "Denali", and on most of the ships that I have been on, on most of them you give by points.

Q. Now, the compass cards—both standard and steering compasses—how were they marked off?

A. Well, they were the regular standard compasses—Ritches.

Q. How were they marked off, with points or degrees, or both?

A. Both.

Q. Now, what time did you get on watch on the evening of May 18th—the night before the stranding?

A. 6:00 o'clock in the evening.

Q. With whom were you on watch? [2162]

A. Well, the captain.

Q. Do you remember approximately where the ship was then?

A. Yes. She was coming up towards Bonilla Island.

(Testimony of Erwin P. Larson.)

Q. Could you fix that position a little more definitely by reference to the log book?

A. Oh, I would not need the log book on that. I remember. She was five or six miles or so from Bonilla Island.

Q. Do you remember what course you were on then?

A. No, I do not. I paid no attention to the courses.

Q. Could you refresh your mind from the log book, Claimants' Exhibit A-4?

A. Yes.

Q. Will you do so? (Handing Claimants' Exhibit A-4 to the witness).

A. Northwest by West a quarter West on the standard, and Northwest by West on the pilot house compass.

The Court: What is that?

The Witness: Northwest by West $\frac{1}{4}$ West on the standard and Northwest by West on the pilot house compass.

The Court: You will have to slow down a little bit.

The Witness: All right.

Q. (By Mr. Long) Now, was any bearing taken that evening by anyone on your watch—a four point bearing?

A. Yes. We took——

Q. (Interposing) Just tell us who took it, and how it was taken.

(Testimony of Erwin P. Larson.)

A. Oh, I took a bearing of Bonilla Island shortly after I went up there, and I took a bearing of Bonilla Island [2163] after I got it abeam, and I took a bearing of the old Triangle Island Light—the Triple Island Light.

Q. You say “The Old Triangle Island Light”.

A. Yes.

Q. You used to call it that, did you?

A. That is where the light used to be.

Q. And that is now referred to as Triple Island Light?

A. Yes, sir; it is now referred to as Triple Island Light.

Q. What time did you take that bearing, and what kind of a bearing was it?

A. It was a four point bearing on the Hanson bearing board. That means a forty-five degree angle from the bow.

Q. Do you recall what time you took that?

A. No, I don't.

Q. You can refer to the log book if you need to.

A. (Looking at Claimants' Exhibit A-4) 10:49 P. M.

Q. Is that in your own handwriting?

A. Yes, sir.

Q. Mr. Larson, did you know whether or not Captain Healy was trying to go through Caamano Passage?

A. Yes. The captain told me the day before—I think it was the 17th—let me see, the 16th—yes,

(Testimony of Erwin P. Larson.)

the 17th it was, I think, that he would go through Caamano Passage.

Q. Referring to Claimants' Exhibit A-10, I will ask you if you know what that is?

A. That is a chart of Southeastern Alaskan waters—Dixon's Entrance is what they call that.

Q. What numbered chart is that?

A. 8102. [2164]

Q. Have you ever seen that chart before?

A. Yes, sir.

Q. Where?

A. On board the Steamship "Denali".

Q. Who put the lines on the chart that are there?

A. I did.

Q. When did you put them on? Did you put them on at the same time as—let me ask you first that.—

A. (Interposing) No, sir, I did not.

Q. (Continuing) Well, when did you put the lines on and refer to which lines that you put on at that time.

A. The lines as marked here were put on on the 17th in the forenoon. I laid them out.

Q. For what purpose?

Mr. Ryan: Indicating what lines, please?

The Witness: Them big ones here (indicating).

Q. (By Mr. Long) Well, we can get it this way; indicating all of the lines except that line marked "North by West 1/8 West", going through Caamano Passage.

(Testimony of Erwin P. Larson.)

A. Yes, sir, that is right.

Mr. Long: Is that satisfactory?

Mr. Ryan: Yes. [2165]

Q. (By Mr. Long) Did you know what your first port of call was to be?

A. Yes; Metlakatla.

Q. Why did you put these lines down; just tell us.

A. Oh, that is just—

Mr. Ryan: (Interposing) Indicate the lines.

Mr. Long: The lines that he just referred to. All the lines on the chart, with the exception of that line marked Northwest $1/8$ West, going through Caamano Passage.

Q. When did you put those down?

A. On the 17th.

Q. Why?

A. I always do. I like to know the distances between the points, like Triple Island and Metlakatla, and Triple Island and Cape Shucklin, and I always mark it on a notebook that I used to keep at the time. I have got three or four of them. All the points in Alaska, canneries and different lights, for further reference.

Q. That notebook you refer to, is that part of the ship's equipment, or is it your personal equipment?

A. That is my personal equipment. I have got four of them here.

Mr. Ryan: Mr. Long, will you stand back a little. I cannot hear the witness. What was that last answer? (Answer read.)

(Testimony of Erwin P. Larson.)

The Court: The Court desires further information from this witness touching any use, and if any use what use was made of those lines which he says he put on there.

Mr. Long: I am going into that, Your Honor, with [2166] the other chart and this one, as well.

Q. (By Mr. Long) Referring first to this chart, was this one of the charts that you received aboard the "Denali" pursuant to the requisition you made?

Mr. Ryan: I object to that as leading. Please ask the witness the direct question.

Mr. Long: It is marked right on here.

Q. (By Mr. Long) When did you get this chart on the ship?

A. I brought it on board at Seattle.

Mr. Ryan: May I ask counsel to stand farther from the witness.

The Court: He cannot, because he has to assist the witness in holding the map, but the Court will have his answer repeated. The witness will hold up his voice, and counsel will, too.

Q. (By Mr. Long) Tell us what other chart did you have of this area, if any?

A. We had two or three charts. You mean the particular area of Dixon Entrance?

Q. Dixon's Entrance, Caamano Passage, Zayas and Dundas Islands, and that area.

A. We had two or three of them aboard.

Q. Did you have any different scale charts than this No. 8102, which you are now holding?

(Testimony of Erwin P. Larson.)

A. Oh, yes; we had a big scale, and a smaller scale.

Q. Referring to Petitioner's Exhibit No. 33, being chart No. 2828, did you have a copy of this chart aboard?

A. Absolutely.

Q. Were any lines drawn on that in connection with the area around Caamano Passage and Triple Island Light? [2167]

A. Yes. That is the captain's navigating chart when he is navigating.

Q. Who put the lines on that chart?

A. The captain.

Q. On the evening in question what charts or chart were you using in connection with the navigation, approaching a point off Triple Island Light?

The Court: If you were using any.

The Witness: You mean approaching the Island?

Q. Yes.

A. Well, that is the chart the captain was navigating by.

Q. You refer now to Petitioner's Exhibit No. 33?

A. Yes.

Q. Were there any courses drawn on that chart?

A. The captain had his own courses drawn on that chart.

Mr. Long: Counsel has just called my attention to the inquiry by the Court, and I neglected to go into that.

(Testimony of Erwin P. Larson.)

Q. What use did you make of those lines that you put on this chart, Claimants' Exhibit A-10? Tell the Court what you put them down for, and what use you made of them?

A. Well, I just said that I measured the distances between the different points, and I mark them down in a book and use it for further reference late on. If I want to know the distance between certain points all I have to do is look in my book, without measuring on the charts.

The Court: In connection with the navigation of the ship, what use, if any, was made of those lines which you put on that chart?

The Witness: Oh, that had nothing to do with the [2168] navigation of the ship. That was like I said, for my own information.

The Court: Very well. Now, referring to Petitioner's Exhibit No. 33, did you mean to say when counsel was inquiring about that a moment ago that that particular chart was on board the ship on this voyage in question?

The Witness: That chart?

The Court: Yes.

The Witness: Absolutely.

The Court: That particular one?

The Witness: That one, no—the same kind. There is no difference, Your Honor.

The Court: All right.

Q. (By Mr. Long) I will ask you, Mr. Larson, to observe the date of the printing of this chart.

(Testimony of Erwin P. Larson.)

This chart is also stamped "October 6, 1937", but I will ask you as to the printed date of the edition of the chart.

A. It is the edition of the 5th of October, 1922, the same edition as we had. There has been no new issue of that chart printed.

Mr. Ryan: I would like the record to show that the witness was reading from the chart.

Mr. Long: Yes; I asked him to read from it, Mr. Ryan.

The Court: You may proceed now.

Q. (By Mr. Long) What time did you go off watch on the evening of May 18th?

A. Well, I was relieved by the third mate. He came up approximately the same time as the pilot, 11:50 in the evening, and I stayed up there until two or three minutes after 12:00, when I went below. [2169]

Q. Did you say 11:15 or 11:50?

A. 11:50.

Q. That is ten minutes to 12:00?

A. Yes.

Q. Did you take the log at 12:00 o'clock?

A. I didn't take it. It was brought up by the quartermaster.

Q. I realize you personally did not read it, but was it done under your direction?

A. Oh, yes. They always do.

The Court: Will you ascertain what log he is referring to?

(Testimony of Erwin P. Larson.)

Mr. Long: I refer to the patent log.

The Witness: The patent log, yes.

Q. (By Mr. Long) Where is that on the ship?

A. It is located back aft. It is approximately 10 or 12 feet long, and we have it sticking over the side in order to have it clear of the ship.

The Court: That is sufficient.

Q. Is that also commonly referred to as the taffrail log?

A. It is the same thing.

Q. Or the patent log?

A. Yes.

Q. They are interchangeable terms?

A. Yes.

Q. At the time you left the bridge, Mr. Larson, could you see Triple Island Light?

A. Sure, I could see Triple Island Light.

Q. What was the visibility at that time?

A. Good.

Q. Tell us what the visibility was as to the lighted and [2170] as to unlighted objects.

A. Well, I could see Triple Island clear as a bell, and I saw the outline of the mountains of Melville Island, the island behind Triple Island.

Q. What island was that?

A. I think the name is Melville Island.

Q. Had you made any estimate, Mr. Larson, as to about what time the vessel would come abeam in the completion of her four point bearing?

A. I didn't expect to be off there until after midnight, and when we got the log at 12:00 o'clock

(Testimony of Erwin P. Larson.)

we saw that she would be approximately on the track. Of course I couldn't judge by 12:00 o'clock, but she would be approximately on the track.

Q. What do you mean, on the track?

A. By track we mean where the ship is supposed to be.

The Court: You mean the course, do you not; the course she was supposed to be making?

Q. (By Mr. Long) You mean the course, don't you?

A. Yes.

Q. Referring to the line on the chart which you are now holding in your hand, Claimants' Exhibit A-10, chart No. 8102, did you draw any other lines on that chart that evening?

A. Yes.

Q. What line did you draw then, and when did you draw it?

A. Oh, that line, I drew that approximately five minutes to 12:00. I was talking to the pilot in the chart room and he asked me how far I figured she would be off, and I said, "Oh, ten, eleven, eleven and a half miles." [2171]

Q. What do you mean, how far off what?

A. Off Triple Island.

The Court: Have him identify the line.

Q. Which line do you now refer to that you drew?

A. The line laid off from Triple Island, up to Caamano Passage.

(Testimony of Erwin P. Larson.)

Q. Is that marked with any indicating figures or letters?

A. Yes; I marked it as North by West $\frac{1}{8}$ West.

Q. Is that your handwriting (indicating)?

A. It is.

Q. And that is drawn on a point approximately how far from Triple Island Light?

A. I think I made it approximately 11 miles off Triple Island.

Q. Was that drawn before or after the ship came abeam of Triple Island?

A. That is just approximately my own figures, as I said; 11 miles.

The Court: No.

Q. Was it drawn before or after she came abeam?

A. Yes; it was drawn at five minutes to 12:00, I would say.

Q. Do you know what time the ship actually did come abeam? You were not on watch?

A. No; I wasn't on watch.

Q. You say you had some conversation with the pilot, that is, Capt. Obert?

A. Yes.

Q. Was he examining any charts, or looking at any charts?

A. He was examining the chart that the captain had his courses laid out on. [2172]

Q. You are pointing to the chart here, Petitioner's Exhibit No. 33?

(Testimony of Erwin P. Larson.)

A. Yes.

Q. You mean a chart like this one, a copy of this one you have referred to before?

A. A copy of this one, yes, sir.

Q. The large scale chart?

A. The same as that.

Q. Do you know when the captain put his lines on the chart, his course lines?

A. He laid them that morning before; he was working with the charts in there.

Q. You didn't see him?

A. I didn't see him lay them, but I know he laid them, because it was his writing on the charts, and I know he laid them.

Q. According to this you were going up on what course, Mr. Larson, up to Triple Island?

A. Oh, I don't know; I can't remember the course.

Q. Well, look at the log book?

A. Northwest $\frac{1}{4}$ North, on the standard.

Q. All right. What course did you lay out, magnetic, to be made good, going through Caamano Passage? Did you lay it out on this chart here? You just read it a minute ago.

A. Oh, yes. I just laid the track, 11 miles off Triple Island, right up on that chart.

Q. What is that course you laid off?

A. The one I laid off?

Q. Yes. Take a look at it if you do not remember it.

(Testimony of Erwin P. Larson.)

A. North by West $\frac{1}{8}$ West. [2173]

Q. Is that the course mid-channel to be made good?

A. Yes; on this part it is.

Q. That is mid-channel?

A. Yes; on this chart here.

Q. That is North by West $\frac{1}{8}$ West, is that right?

A. Yes.

Q. Is that the same mid-channel track that the captain laid off on the large scale chart to which you have referred?

A. I couldn't say that. I didn't look. I just laid 11 miles off on this chart, and I can't remember what the captain had on his chart.

Q. Well, the point $10\frac{1}{2}$ or 11 miles off Triple Island, on the course you were going up on, what would be the magnetic track through the center of Caamano Passage?

A. $10\frac{1}{2}$ miles?

Q. About $10\frac{1}{2}$ or 11 miles, what would be the magnetic track through the center of Caamano Passage?

A. At 11 miles it is North by West $\frac{1}{8}$ West.

Q. And that is what you laid it?

A. Yes.

Q. Where were you when the ship stranded?

A. I was in my room, asleep.

Q. Tell us what you did? Did it awaken you?

A. Yes; I woke up, and I went out on deck and looked around.

Q. Which side of the ship, port or starboard?

(Testimony of Erwin P. Larson.)

A. My room was on the port side, so I naturally went out on the port side first.

Q. What did you see?

A. I saw the land there. [2174]

Q. What land?

A. Well, it was Zayas Island.

Q. Just tell us what you saw and how it looked to you, and what your impressions were.

A. When I got out on deck——

Q. (Interposing) Were you dressed then, when you went out on deck?

A. No; I went out right the way I was. I saw the land there and nice and clear, the way it looked to me when I saw it first. It looked to be about two or three miles off.

Q. Just what did you do, and what did you see?

A. I went up forward there and I saw Dundas Island on the other side.

Q. On your starboard side?

A. Yes.

Q. How did that look?

A. It looked to be about the same distance off. It was awfully deceiving, the whole thing, when I looked at both islands.

Mr. Ryan: I did not hear that answer.

The Witness: It was awfully deceiving.

Mr. Ryan: Please read his last answer. (Answer read as follows:

“A. It looked to be about the same distance off. It was awfully deceiving, the whole thing, when I looked at both islands.”)

(Testimony of Erwin P. Larson.)

Q. (By Mr. Long) How did the ship appear on the heading that she was then lying, with reference to being mid-channel or otherwise? Tell us what it looked like to you?

A. She appeared to me like she was heading right up mid-chan- [2175] nel.

Q. What did you do next? Did you find out later what the ship's heading was?

A. Well, I went in my room and I dressed and went up on the bridge.

Q. Who was there?

A. Well, the captain, the pilot, and the chief officer.

Q. Was the captain dressed?

A. Yes.

Q. What did you do? Just tell us in your own words what you did?

A. Well, the captain instructed me to take a bearing on the standard compass of Tree Point Light.

Q. What for?

A. Well, to locate where we was at. I would have done it myself, anyway, because I couldn't figure where the ship was at.

Q. What did you do?

A. I went up and took a bearing on the standard compass of Tree Point Light and reported it to the captain, and he told me to lay it out on the chart.

Q. What bearing did you get?

A. North by West.

(Testimony of Erwin P. Larson.)

Q. Did you lay it on the chart?

A. I did.

Q. What did it indicate with reference to where you were, where the vessel was?

A. The bearing took her right over the reef.

Q. What was the ship's heading, do you remember?

A. She was heading North half East on the standard. [2176]

Q. Were any other bearings taken on Tree Point?

A. The mate had taken his bearing and laid it out on the chart that the captain had his lines on, and I laid the same bearing out. It was absolutely the same as the mate's, right over the reef, by the pencil line.

Q. Do you know what bearing the mate secured?

A. I could see it on the chart.

Q. What was it?

A. The same as mine.

Q. What was that, magnetic?

A. North by West.

Q. How well could you see Tree Point Light at that time?

A. Well, I could see it good, plain.

Q. Did you see the light itself or the flare of it?

A. Oh, I saw the whole light, the light from the lighthouse.

Q. Do you know what the range of that light is?

A. About 15 or 16 miles.

(Testimony of Erwin P. Larson.)

Q. How far, approximately, if you remember, was this reef from the lighthouse, or the light?

A. A little better than 14 miles.

Q. I do not know whether I asked you or not; where was the ship's heading?—By that I mean how was the bow heading?

Mr. Ryan: You have asked him that before.

Mr. Long: I may have done so.

Mr. Ryan: I object to it as repetitious.

Mr. Long: If the Court please, may I ask him where the ship's heading was? I want to be sure of that.

The Court: I have heard it, but you can ask him again. [2177]

The Witness: She was heading North 1/2 East.

Q. (By Mr. Long) Was any effort made to back the ship off the reef?

A. The captain tried to back her off several times.

Q. With any success?

A. No.

Q. Did the ship move?

A. No, sir.

Q. What did you do then? Just tell us what you did.

A. Well, the captain instructed the mate and us, the second and third mates, to get the lifeboats ready and get all the crew ready to go in the lifeboats.

(Testimony of Erwin P. Larson.)

Q. By the way, what was the state of the weather or sea at that time, when you first went out on deck?

A. Calm.

Q. How soon was this after it stranded?

A. After I got out on deck?

Q. Yes.

A. Half a minute or a minute.

Q. You say you could see Zayas Island and Dundas Island, you have described that—could you see any other land?

A. Yes; I saw the mountains up in the sky, up behind Tree Point Light, up in Portland Canal.

Q. Referring to Petitioner's Exhibit No. 33, would you indicate on this chart where Tree Point Light is. Draw a red circle around Tree Point Light.

A. (Witness indicates on exhibit.)

Q. What mountains could you see?

A. I saw the high mountains up here, up in the sky, quite high. I don't know how high they are.

[2178]

Q. What does the chart indicate as to their height?

A. I cannot see that—1400 or 1500 feet, around there.

The Court: 1400 or 1500 feet.

Q. I call your attention to one 2000 feet, is that right?

A. Yes; 2068.

(Testimony of Erwin P. Larson.)

Q. What was the condition of visibility with respect to darkness or daylight? Tell us about what the condition was there?

A. Well, it was like it is up in the northern latitudes at that time of the year. It is deceiving air in the morning. Otherwise, it was plain all around, you could see for miles and miles.

Q. Was it dark or daylight?

Mr. Ryan: Will you read the last answer (last answer repeated.)

A. It was getting to be daylight shortly after that.

Q. What did you mean, Mr. Larson when you used the term "deceiving air"? Is that a term used by seamen, and does it have any significance? What do you mean by it.

A. Well, it is apt to fool anybody, any man going to sea, air like we had that morning.

Q. What did it affect?

A. Well, it affects the atmosphere. Sometimes the shoreline will look to be right on top of you and you might be three or four miles off—it will look to be only a mile or half a mile off; and then at other times again it will appear to be three or four miles off and you may only be one mile off.

Q. Do you experience that condition in Alaska with any frequency; is that common or otherwise?

[2179]

A. Yes; it happens quite often.

Q. Now, then, after you got the lifeboats ready just tell us what you did and where you went?

(Testimony of Erwin P. Larson.)

A. Well, after we got the lifeboats ready I got my crew, the fellows I was supposed to have in my boat, and we lowered the boat.

Q. Which side?

A. My boat was located on the starboard side. And there was a little swell coming up at the time, and when we got the boat down in the water of course we let go the boat falls, or the releasing gear—

Q. What happened?

A. I had to get away from that side because the side was setting me right up beside the ship, and it nearly smashed the boat.

Q. What happened then? Just tell us.

A. I told the captain, and he told me to go over on the port side, and I proceeded towards the stern of the boat, but the tide was quite strong, and I hollered up to the third mate on deck to give me a line down, to pass me a line down so I could hang onto the line in going around the stern, because there was quite a tide running there.

Q. Which way was the tide running, in which direction, as you observed it?

A. She was setting the lifeboat right towards the side of the ship.

Q. After you got around under the stern and clear of the ship did you observe which way the tide was running?

A. I could see it abaft the rudder of the ship, the tide [2180] setting around South Southwest, magnetic.

(Testimony of Erwin P. Larson.)

Q. Did you notice the direction in which the log-line was streaming at that time?

A. The log-line was bearing approximately the same, South Southwest.

Q. Was it directly behind, streaming behind?

Mr. Ryan: That is objected to as leading.

Mr. Long: It is leading, and I will withdraw it.

Q. With relation to a line directly astern of the vessel, how was the log-line streaming? Do you understand my question?

A. Yes.

Q. All right; tell us.

A. About 20 degrees.

The Court: At this point we will take the noon recess until 2:00 o'clock.

(Whereupon a recess was taken until 2:00 o'clock p. m., November 5, 1937.) [2181]

November 5, 1937,

2:05 o'clock P. M.

Court convened pursuant to adjournment;

All parties present.

The Court: Any other *ex parte* matters or matters on agreement? If not, you may proceed with the case on trial. Mr. Larson, resume the stand.

Mr. Long: Mr. Bogle asked me to advise the Court that he will be detained for a very few minutes.

The Court: You may proceed.

(Testimony of Erwin P. Larson.)

ERWIN P. LARSON,

resumed the stand for further examination.

Further Direct Examination

By Mr. Long:

Q. Mr. Larson, immediately before lunch I had questioned you concerning the angle that the logline was streaming from the stern of the vessel. I believe you replied, "approximately twenty degrees". Will you advise us, please, in which direction the logline was streaming from the stern of the ship?

A. South Southwest, approximately.

Q. And when you said "twenty degrees" would you advise us just what you meant by twenty degrees—from what?

A. From the stern—from the angle on the stern of the ship.

Q. Now, what was the practice of the "Denali" on this voyage comparing the standard and pilot house compasses? [2182]

A. The same practice as on any other ship, you always compare the standard compass with the steering compass.

Q. When was it done?

A. Whenever we changed our course—on every two hours. If you run a course any longer than two hours we always compared the two.

Q. Was that practice followed on this voyage?

A. Absolutely.

Q. Now, on the voyage north and while you were

(Testimony of Erwin P. Larson.)

on watch, did you take any bearings on shore objects, or otherwise?

A. Yes, sir, I did.

Q. Handing you Claimants' Exhibit A-4 would you indicate please—

The Court: (Interposing) Is that properly identified?

Mr. Long: Yes. It is Claimants' A-4.

Q. (By Mr. Long) Handing you Claimants' A-4, which is the pilot house log book, would you indicate the bearings to which you refer; not necessarily each of them, but some of them so that we will understand it?

A. Point No Point; Morrowstone Light; Sheringham Point Light.

The Court: Pronounce your words more distinctly.

The Witness: Sheringham Point Light; Tatoosh Island Light; Swiftsure Lightship.

Q. (By Mr. Long) And what kind of bearings were those?

A. Regular four point bearings. You take four point bearings abeam and when you get her abeam you take the bearing again. [2183]

Q. What does that give you? What is the purpose of that? What do you wish to ascertain by that method?

A. The position of the ship. You get the position of the ship off of the certain object.

Q. The position of the ship off that certain object?

(Testimony of Erwin P. Larson.)

A. Yes, sir.

Q. Now, when you were on watch on the 16th, 17th and 18th, on this voyage, did you lay out the magnetic track of this ship on those charts?

A. For the ship to run?

Q. Did you lay out your courses or tracks on the chart?

A. No, I never did.

Q. Who were they laid out by, by the officers or by Captain Healy?

A. Captain Healy did that.

Q. While you were an officer on the watch tell us whether or not the ship made good or ran those courses?

A. She did.

Q. Did you have occasion to make any allowance for the tide at any place?

A. Not to my knowledge.

Mr. Ryan: What was that answer?

The Witness: Not to my knowledge.

Q. (By Mr. Long) Who would set the course, if any allowance was made for tide on your watch?

A. The captain.

Q. The captain?

A. Yes, sir.

Q. What experience, Mr. Larson, have you had as an officer on watch of ships navigating Dixon's Entrance and adjacent [2184] waters?

A. You mean——

Q. (Interposing) What experience have you had?

A. You mean crossing Dixon's Entrance or——

(Testimony of Erwin P. Larson.)

Q. (Interposing) Yes, crossing Dixon's Entrance and those waters about Dixon's Entrance.

A. For the last two years I have been on a ship that was on that certain run of Hecate Straits on the west coast of Prince of Wales Island, and I can say that I crossed Dixon's Entrance approximately thirty-five times in the last two years.

Q. Now, as a result of your experience—

Mr. Summers: (Interposing) I would like to interrupt there, if I may, for a moment. You mean the last two years before the trial—before this trial?

The Witness: The last two years.

Mr. Summers: Since the "Denali" stranded?

The Witness: Yes, sir.

Mr. Summers: I thank you.

Q. (By Mr. Long) Now, had you ever been in Dixon's Entrance before the "Denali" stranded?

A. Yes.

Q. Now, as a result of your experience, Mr. Larson, what can you say as to the regularity of the tides encountered in Dixon's Entrance?

A. Well—

Mr. Ryan: (Interposing) I object to that on the ground that the witness has not been shown to have sufficient experience there to qualify him to give that answer, and, further, tides in Dixon's Entrance are shown [2185] on United States Government's charts, and this is apparently an attempt to open up the subject of whether the United States Government properly knows its subject in giving

(Testimony of Erwin P. Larson.)

information to mariners as to what the tidal currents are in that area.

Mr. Long: We will show that they are not correct.

The Court: The Court rules that the objection is sustained on the first ground stated by counsel, that his experience has not been sufficiently shown as of that time or approximately that time.

Mr. Long: I will go into that a little further.

Q. (By Mr. Long) How many times have you been on watch? How many trips have you made as an officer on watch on vessels navigating in these waters?

The Court: Prior to May 19, 1935?

Mr. Long: Well, both prior and after.

The Court: He has already said that he has had experience during the last two years, which is after. It is of interest especially in this connection to see what his experience has been before also.

Mr. Long: Very well.

Q. (By Mr. Long) What has been your experience on vessels navigating in these waters before May 19, 1935?

A. Well, before that May 19, 1935, I had never been in the capacity as an officer there, but two or three times—up to that time—but I had been there as a quartermaster approximately twenty times.

Q. (By Mr. Long) Had you an opportunity, both before and after the stranding of the "Denali" to observe—

Mr. Ryan: (Interposing) May I have that last [2186] answer read? I didn't quite get it all.

(Testimony of Erwin P. Larson.)

(Answer read as follows:

“Well, before that May 19, 1935, I had never been in the capacity as an officer there but two or three times—up to that time—but I had been there as a quartermaster approximately twenty times”.)

Mr. Ryan: The answer is not clear to my mind, nor the question. Dixon’s Entrance is a tremendous body of water. Is he being asked about going through Caamano Passage or not?

The Court: The inquiry will have to wait the opportunity of cross examination. Proceed.

Q. (By Mr. Long) As a result of your experience, Mr. Larson, both before and after the stranding, have you had occasion or opportunity to observe the actual tides——

Mr. Summers: (Interposing) Just a minute.

Mr. Long: Wait until I finish my question.

Mr. Summers: Well, I want to make an objection when you are thorough with your question. I was talking to one of the officers and I would like to have the question so far propounded read.

Mr. Long: Read the question.

(Question read as follows:

“As a result of your experience, Mr. Larson, both before and after the stranding, have you had occasion or opportunity to observe the actual tides——”)

(Testimony of Erwin P. Larson.)

Q. (By Mr. Long) The actual tides in Dixon's Entrance, and the effect of the tides upon vessels navigating those waters?

Mr. Ryan: Now, Your Honor—— [2187]

Q. (Continuing) Including around Triple Island Light and north of that and south of that, and the whole area of that vicinity.

The Court: Now wait until counsel makes their objection.

Mr. Summers: I have no objection if he just answers that by yes or no.

A. Yes.

Mr. Long: That is just what I want him to say.

Q. (By Mr. Long) What has been your experience—just tell us as to your observation with relation to the regularity or irregularity of the tides in that area.

Mr. Summers: I object to that, if Your Honor please, because in discussing the admissibility of this counsel has said that the tides have not changed. If they have not changed, then this question seeks to do one of two things, either to prove that the tides are the same as shown on the chart, and the currents are the same, in which event it is not necessary and it is not material, or that they are different, and in that event it is an attempt to impeach the government charts and that is, of course, inadmissible.

The Court: Objection overruled.

Mr. Summers: Exception.

The Court: Exception allowed.

(Testimony of Erwin P. Larson.)

Q. (By Mr. Long) Just go ahead.

Mr. Ryan: May I object on the further ground that similarity of conditions is not shown as to those under which the "Denali" was navigating that night; that in fact his observations were under dissimilar conditions, [2188] and also that it is too far afield. The whole of Dixon's Entrance is involved. Counsel does not limit it to Caamano Passage or to any place where the "Denali" was navigating.

The Court: Objection overruled.

Q. (By Mr. Long) Just go ahead and tell us, Mr. Larson. What has been your experience?

A. My experience in Dixon's Entrance and Hecate Straits so far as the tide and current goes, I would not depend on no tide table.

Q. (By Mr. Long) Have you observed—

Mr. Ryan: (Interposing) May I move to strike that out on the ground that it is an attempt to impeach the accuracy, or an attempt by oral testimony, not shown to be of any substantial weight, as compared with the standard use by the Government Hydrographers in preparing these charts and in issuing these instructions—it is an attempt to show that the United States Government's instructions to mariners, in the form of government charts are wrong, and this is not a proper way for the Court to take up this matter, it having been already decided by the proper department of the government—by the Hydrographic Department of the Navy and by the Coast and Geodetic Survey.

(Testimony of Erwin P. Larson.)

The Court: The motion will be overruled and denied.

Mr. Ryan: Exception.

Mr. Summers: To avoid repetition may it be understood that our objection is reserved to all similar questions?

The Court: Yes. [2189]

Mr. Long: What was that last question and answer? (Question and answer read as follows:

“Q. Just go ahead and tell us, Mr. Larson. What has been your experience?

A. My experience in Dixon’s Entrance and Hecate Straits so far as the tide and current goes, I would not depend on no tide table.”.)

Q. (By Mr. Long) Have you observed in connection with navigating these waters the irregularity of the tide as compared with the actual tide tables?

A. I have.

Mr. Ryan: I object to that on the ground that it is leading.

The Court: Objection sustained.

Q. (By Mr. Long) What comparison have you made between actual observations and the effect of the tide on your vessels with the tide tables up there and current tables?

A. Well, it is very seldom that I could see any ship could make a course good after they enter Dixon’s Entrance.

Mr. Ryan: Would you read the answer?

(Answer read)

(Testimony of Erwin P. Larson.)

Q. (By Mr. Long) Explain that a little further, Mr. Larson, if you will, please.

A. Well, you always have to either pull them to the left or to the right even if you allow them a certain amount of tide and you figure there would be so much tide there, and so far as I seen pretty near all the time I got fooled on the tide.

Q. Does your experience indicate to you that the tide is [2190] predictable as to force and direction?

A. No.

Mr. Ryan: I want to object to that on the ground that it is leading, and I move to strike that out.

The Court: Objection overruled. Motion denied.

Mr. Ryan: Exception.

Q. Now, Mr. Larson, what is your opinion as a licensed officer as to whether or not at the time that the "Denali" sailed from Seattle she was properly supplied and equipped with the necessary navigation instruments, charts, and other publications, notices to mariners and data ordinarily furnished on ships of this kind for such a voyage?

Mr. Ryan: Just a minute. I think the witness' knowledge and recollection have already been inquired about specifically, as to just what he put on board, and what was on board, and we have the deck equipment book here. Now, to ask the witness to draw some inference or conclusion of his own as to what is necessary or not, it seems to me is calling for a decision on a matter which has to be determined by the Court and not by the witness. This

(Testimony of Erwin P. Larson.)

is a conclusion or inference from facts which are already before the Court in the form of specific questions and answers.

The Court: The Court has heard that specific question asked of some witness today, but he is in doubt as to whether it was asked of this particular witness. The Court is accordingly going to let this witness answer that question at this time.

Mr. Ryan: Exception. [2191]

The Court: Exception allowed.

Mr. Long: Read the question.

(Question read as follows:

“Now, Mr. Larson, what is your opinion as a licensed officer as to whether or not at the time that the ‘Denali’ sailed from Seattle she was properly supplied and equipped with the necessary navigation instruments, charts, and other publications, notices to mariners and data ordinarily furnished on ships of this kind for such a voyage?”)

A. Absolutely she was seaworthy.

The Court: Are you asking him for a conclusion as to seaworthiness?

Mr. Long: For both, Your Honor. That would be my next question.

The Court: Read the question.

(Question read again)

Mr. Ryan: That is further objected to, in addition to the other grounds that I specified, on this ground, that the nature and extent of the examination made by this witness has already been brought

(Testimony of Erwin P. Larson.)

out in his testimony, and it has been shown that that was not sufficient to warrant his being asked a question in such a general form. He made no answer of such a substantial nature or extent that would qualify him to give a general statement that the ship was seaworthy. No such examination of such a substantial nature or extent was made by counsel of this witness.

Mr. Long: I am referring, of course, with reference to things under his jurisdiction.

The Court: Objection overruled. [2192]

Mr. Ryan: Exception.

The Court: Exception allowed.

Q. (By Mr. Long) Just one other question, Your Honor, that I overlooked. Where is the log book?

The Court: Here it is (handing book to counsel).

Mr. Long: Excuse me. I didn't see it.

Q. (By Mr. Long) Calling your attention to the pilot house log book, Mr. Larson, on page—or under date of May 13th, the writing in red letters, is this your writing (indicating), did you make that entry?

A. I did, yes, sir.

Q. Would you read that entry, please?

A. "Steering gear, whistle, telegraph"—

The Court: Do not read it out loud. Just read it to yourself.

(Testimony of Erwin P. Larson.)

Q. (By Mr. Long) I just want you to read it to yourself. I don't know whether you can read it or not.

A. Yes, I can.

Q. Is that your writing?

A. Yes, sir.

Q. Your handwriting?

A. Yes, sir.

Mr. Long: I want the reference to particularly and properly show in the record, Your Honor. May I be permitted to read it so that I can show it in the record? There is no line on there or any manner in which I can do that.

The Court: You may state what he refers to, if you can do so. [2193]

Mr. Long: The witness refers to the red printing on the right hand side of the page, dated May 13, 1935, and directly above the ruled lines on that side of the page.

The Court: Very well. [2194]

Mr. Summers: If Your Honor please, before cross examination is started I wish to make a motion. The log book in evidence in this case——

The Court: It has not been formally admitted, Mr. Summers.

Mr. Summers. It is Claimants' Exhibit A-4 for Identification.

Mr. Long: I now offer the log book, Your Honor. I thought it had been admitted. If I am mistaken, then I offer it in evidence at this time,

(Testimony of Erwin P. Larson.)

the pilot house log book marked Claimants' Exhibit A-4.

The Court: Is there any objection to its admission?

Mr. Summers: No, Your Honor.

The Court: Claimants' Exhibit A-4 is now admitted.

(Log book received in evidence Claimants' Exhibit A-4.)

And in that connection, may I remind counsel that there are only two of Claimants' identified exhibits which have been admitted, the two being Claimants' Exhibit A-2 and Claimants' Exhibit A-4. No other of the Claimants' identified exhibits have been admitted.

Mr. Ryan: I thought, Your Honor, that we would introduce our exhibits as part of our case.

The Court: Very well.

Mr. Long: At this time, if Your Honor please, I wish to offer in evidence Claimants' Exhibit A-10, being the chart referred to by this witness and by other witnesses many times.

Mr. Summers: I think that should be objected to at this time. [2195]

Mr. Ryan: Claimants' Exhibit A-6 was admitted in evidence, according to our notes, Your Honor. That exhibit consists of the depositions of Commander Richards, of the United States Coast Guard, and other officers and members of crew of the Cutter "Cyane", and also Commander Dirks. Also,

(Testimony of Erwin P. Larson.)

there were some photographs offered in evidence, and all the exhibits annexed to those various depositions of the officers and crew of the Coast Guard Cutter "Cyane".

Mr. Long: My recollection is that it was admitted that they would be considered part of the Claimants' case.

Mr. Ryan: But they are in evidence.

The Court: The whole deposition is in evidence, is that what you claim?

Mr. Ryan: Yes, Your Honor.

The Court: The depositions have not yet been read.

Mr. Ryan: Your Honor, I am prepared to read them now, or at any time, but that is the reason I brought this up. That occurred at an early stage of this trial.

The Court: Is that subject to any objections noted in the depositions?

Mr. Ryan: It was agreed that the objections to the questions that were asked at the time of the taking of the depositions would be considered, that they could be renewed. They have not seen fit to make any of those objections yet.

Mr. Bogle: You haven't read the depositions yet.

Mr. Ryan: I do not want to take the time to read the depositions now, but I am prepared to read them now, [2196] and I ask that I be allowed to if there is any question at all about them being in evidence.

(Testimony of Erwin P. Larson.)

The Court: Subject to the objections noted in the transcript of the depositions.

Mr. Ryan: As stated at the time.

The Court: As stated in the transcript.

Mr. Long: Let me make this suggestion, please; I do not recall the number of the exhibit, but either on the first or second day of this trial this matter was gone into carefully, and the Court made its order as to the extent of the admission of the exhibits attached to the depositions, and I think that order should stand. After all, this is the Petitioner's case, and we should be permitted to try it ourselves.

The Court: I do not have the notation that the deposition itself was admitted, but whatever order was made will stand.

Mr. Ryan: Our notes are very clear on that. If we had not so understood we would have made other arrangements during the trial, if there was any doubt about the depositions being admitted in evidence, with the exhibits.

Mr. Long: The record is very clear on that, Your Honor. At this time, however, I wish to offer in evidence the chart referred to by this and other witnesses, which is marked Claimants' Exhibit A-10. I do not care what exhibit number it may take.

Mr. Summers: It seems to me it should be objected to unless it is shown by the evidence in this case that it has something to do with the navigation of the vessel, [2197] and does not pertain

(Testimony of Erwin P. Larson.)

solely to the personal interests of the witness Larson.

The Court: The objections are overruled, and Claimants' Exhibit A-10 is now admitted.

Mr. Ryan: May I ask that it be given a Petitioner's number, as part of the Petitioner's case?

Mr. Long: I have no objection to that if it suits the Clerk of the Court. For the sake of the record, Your Honor, I might state that we have been referring to it all the way through the record as Claimants' Exhibit A-10.

Mr. Ryan: I beg your pardon. I think perhaps, on the statement on the record that it is being offered in evidence by the Petitioner that it should still be called Claimants' Exhibit A-10, because numerous witnesses have referred to it as Claimants' Exhibit A-10.

The Court: The record will show that it will be admitted, and the ruling of the Court thereon. It is admitted.

(Chart received in evidence Petitioner's Exhibit A-10.)

Mr. Pellegrini: With reference to Claimants' Exhibit A-6, the record at page 636 is as follows:

“The Court: Claimants' Exhibit A-1 is already in the record. It will be Claimants' Exhibit A-6. It has been offered. Is there any objection to it?”

Mr. Long: No, not insofar as—well, we object to the deposition as part of our case, of

(Testimony of Erwin P. Larson.)

course, but not as part of the Claimants' case.

The Court: He is offering it as part of his case [2198] at this time.

Mr. Long: We will not object to the offer, except by reserving, Your Honor, the objections made in the depositions to the individual questions.

The Court: Subject to those objections it will be admitted."

Mr. Long: One of those objections was that it be offered as part of their case, and not part of our case.

The Court: They at that time did offer it; you did not offer it, did you?

Mr. Long: No, we did not offer it. I wanted to use one picture, an enlargement, that is all.

The Court: The record will stand, that Claimants' Exhibit A-6 has been previously admitted, subject to the objections therein stated, subject to preserving the objections therein noted, in the depositions, which may be acted upon later as occasion may require.

Mr. Summers: Preliminary to cross examination, Your Honor, the Claimants make this motion:

Claimants move to strike from the record all testimony of the Second Officer Larson for Petitioner to the effect that at the time of the stranding, or immediately thereafter, the visibility was in excess of two miles, to-wit, fourteen to fourteen and

(Testimony of Erwin P. Larson.)

one-half miles, for unlighted sizable objects, because such testimony is an attempt on the part of Petitioner to impeach Petitioner's log book which records that the visibility at that time was hazy, and it is contradictory of and inconsistent with the Petitioner's answer to Claimants' interrogatories on the subject of visi- [2199] bility at the time of the stranding, to the effect that the range of visibility was from one to two miles for sizable unlighted objects, it being Claimants' contention that Petitioner may not either impeach or contradict the entries in the vessel's log book or Petitioner's answer to interrogatories.

The interrogatory to which Claimants refer in relation to the motion is Petitioner's answer to Interrogatory No. 21, which reads thus: "At the time the steamship 'Denali' stranded * * * what was the condition of visibility:"

And as to sub-division (1) "As to degree?" And the answer is "Dark, shortly before daybreak." Then sub-division (2) "As to range?" And the answer is "Estimated from one to two miles as to unlighted sizable objects."

Then as to the log book, the log book as of the time of stranding says "Hazy", that being Claimants' Exhibit A-4.

The witness on the stand has testified that immediately after the stranding he went up to take a bearing, at the instructions of the master, and at the time of taking the bearing observed 14½ miles

(Testimony of Erwin P. Larson.)

up in the vicinity of Tree Point Light these mountains.

It seems to me that that testimony, and the testimony of a similar character should be stricken, in view of its impeaching character with respect both to the log and the answer to the interrogatory.

The Court: Motion denied.

Mr. Summers: Exception. [2200]

The Court: Exception allowed.

Cross Examination.

By Mr. Ryan:

Q. At the time that you laid down the track of the "Denali", or the lines that you put on Claimants' Exhibit A-10, this chart No. 8102, what course was the "Denali" on?

A. What course was she on?—The 17th in the morning—we left the 16th, and I can't remember what course she was on.

Q. You can refresh your memory from the log book, if you wish (showing).

A. Yes; I wish you would let me. On the 17th—well, West by North $\frac{5}{8}$ North, by the standard.

Q. And by the steering compass?

A. West Northwest.

Q. What time was that?

A. Well, in the forenoon of May 17th.

Q. What time in the forenoon of May 17th did you lay down those lines on that chart?

(Testimony of Erwin P. Larson.)

A. Between 9:00 and 10:00, approximately, sometime around there.

Q. You were working in the chart house of the "Denali" at that time?

A. Yes.

Q. Where was the ship at that time?

A. What time?

Q. The time you laid down that track or lines on that chart, Claimants' Exhibit A-10.

A. Some place around the west coast of Vancouver Island. [2201]

Q. Between Solando Point and Cape Scott?

A. No. That is in the evening, P. M., here (indicating).

Q. Tell me where the ship was, between what points, at the time you laid down that track, the lines, on Claimants' Exhibit A-10.

A. To the west of Estavan Point Light.

Q. South of it or north of it?

A. West.

Q. South of west or north of west?

A. Well, she was west of the line. That means she was to the westward of Estavan Light.

Q. What chart was being used for navigating the "Denali" at that time?

A. Well, the captain had the chart out, Cape Flattery to Dixon's Entrance, and some other charts taking in Vancouver Island; some Canadian charts, I think it was. I can't remember the name or number of them.

(Testimony of Erwin P. Larson.)

Q. Can you give me the number of any one of the charts that was being used to navigate the "Denali" on the morning of May 17th, 1935, when you laid out this track on this chart, Claimants' Exhibit A-10?

A. You are pointing on that chart—I never laid any tracks on that chart.

Q. I am talking about Claimants' Exhibit A-10.

A. I don't know what Exhibit A-10 is. You are pointing at that chart.

Q. You laid out some lines on this chart, Claimants' Exhibit A-10, did you not?

A. Yes.

Q. Now, will you please answer the question?

[2202]

A. Yes. What was the question? (Question read as follows:

"Q. Can you give me the number of any one of the charts that was being used to navigate the 'Denali' on the morning of May 17th, 1935, when you laid out this track on this chart, Claimants' Exhibit A-10?")

The Witness: Well, it is awful hard to remember the numbers of the charts. You couldn't memorize the different numbers on the American and Canadian charts. It is impossible to memorize them and remember them. On some of the ships like the "Denali" they have up to 300 charts, and how could a man memorize the numbers of them? Nobody could.

(Testimony of Erwin P. Larson.)

Q. (By Mr. Ryan) Please listen to the question and answer it, if you can, and if you cannot, say that you do not know or that you do not remember, whatever the truth is. Read the question. (Question re-read as follows:

“Q. Can you give me the number of any one of the charts that was being used to navigate the ‘Denali’ on the morning of May 17th, 1935, when you laid out this track on this chart, Claimants’ Exhibit A-10?”)

A. No, sir; I could not.

Q. Can you give me the title of any one of the charts?

A. Yes, I can.

Q. That was being used to navigate the “Denali” on the morning of May 17, 1935, when you laid this track down on this chart, Claimants’ Exhibit A-10?

A. Yes, I can.

The Court: All right, proceed. [2203]

The Witness: Cape Flattery to Dixon’s Entrance was one of them. That is the only name that I can remember. I do not remember the names of the Canadian charts. I can identify them if you bring around some Canadian charts taking in Vancouver Island, I could identify them. I couldn’t tell you as to the numbers or the names of them.

The Court: Well, just answer the question.

Q. (By Mr. Ryan) Now, the “Denali” proceeded from there on her voyage up to Metlakatla,

(Testimony of Erwin P. Larson.)

and can you tell me the number of any chart used after that in navigating the "Denali"?

The Court: If you can say so, you may answer, and if you cannot, then you can also say so.

The Witness: Yes. I cannot remember the number for the north part of Vancouver Island. I cannot remember that.

The Court: Do you remember the name of it, how it was designated?

The Witness: The west part of Vancouver Island, I think.

Q. (By Mr. Ryan) Now, how many tracks did you lay down on that chart, Claimants' Exhibit A-10, on the morning of May 17th?

A. Do you mean different courses?

Q. Well, general tracks for the vessel, yes.

A. I don't know. It is hard to remember. Maybe two, maybe three.

Q. You mean changes of course of the vessel?

A. Yes.

Q. I do not mean that. You laid down a course on the [2204] morning of May 17th for the "Denali", or for a ship to follow going northward, did you not?

A. No; I laid it down for my own information, to get the distances between the places. I never laid down the track for the ship to travel.

Q. You laid down the track of a vessel on a chart, that is, a magnetic course, did you not?

A. No; I never did.

(Testimony of Erwin P. Larson.)

Q. Well, you laid down a line on a chart, which is the same way that a magnetic course or line would be laid down by a navigating officer of a ship, did you not, on the morning of May 17th, on this chart, Claimants' Exhibit A-10?

A. I don't quite agree with you there. I laid down the line, or the course or the track for me to measure the distances on. I never laid down a track for any ship to travel on.

Q. What course did you first lay down, starting at the bottom of the chart?

A. I don't know.

Q. Referring to Claimants' Exhibit A-10.

A. Oh, I couldn't remember.

Q. I will show you the chart and ask you to tell me.

A. Somewhere around northwest.

Q. Well, give it to me exactly the way it is laid down there—don't spar about it.

A. Northwest $\frac{1}{4}$ North.

Q. Why did you happen to lay down Northwest $\frac{1}{4}$ North at that time?

A. Well, Northwest $\frac{1}{4}$ North, if you lay it out on a chart, it is the course that is steered mostly going up Hecate [2205] Strait from Bonilla Island. It is a parallel course running along the shore, if you are five miles off or ten miles. If you want to you can lay the course off from Bonilla Island up to McCullough Rocks, and it is approximately a Northwest course. That is why I laid it off.

(Testimony of Erwin P. Larson.)

Q. That is the first course you laid down?

A. Yes.

Q. Now, that is the chart No. 8102 that was supplied to the "Denali" just before she sailed on this voyage, is it not?

A. Yes.

Q. It is the only one they had on that trip, is it not?

A. Oh, no.

Q. No. 8102?

A. Oh, no.

Q. The only up-to-date one they had?

A. Up-to-date?

Q. Yes; the only one that was corrected up to date, according to this list?

A. No, sir. She had that chart some years before—the year before—I don't know what it was.

Q. Do you think this chart was issued the year before the stranding?

A. I don't know when it was issued.

Q. You do not know? Well, I will call your attention to the date in rubber stamp on the bottom of it; what is that date?

A. Well, it is corrected up to April 15, yes.

Q. Read the date.

A. April 15, 1935, and it was printed in 1935.

[2206]

Q. Yes. Then it is the very latest chart, No. 8102, issued just before the "Denali" sailed?

A. Yes.

(Testimony of Erwin P. Larson.)

Q. Isn't it?

A. Of course.

Q. It is the only one the "Denali" had on board that was of that late issue?

A. Yes. She had the chart the year before.

Q. What?

A. She had the same chart the year before.

Q. But the very latest chart that the ship had was the one that you were using for practicing on, is that it?

A. I was not practicing; I was getting some information out of it, that is all.

Q. Why did you lay out that course, running up past Triple Island, and leading to the westward, past McCullough Rocks, up to Metlakatla, instead of through Caamano Passage, to the east of Zayas Island?

A. I just told you I wanted the distance between the different points. I told you that twice already.

Q. Is that your only explanation of that?

A. Absolutely.

Q. You didn't know at that time that the "Denali" was going up through Caamano Passage, did you?

A. The 17th?

Q. When you laid down this track here showing a vessel going not through Caamano Passage, but shooting over to the westward past McCullough Rocks, and up to Metlakatla?

(Testimony of Erwin P. Larson.)

A. I never asked anybody at that time.

Q. You didn't know at that time, did you, that the ship [2207] was going through Caamano Passage?

A. No; I don't think I did.

Q. Now, a brand new set of charts was ordered for this ship before she sailed, wasn't it?

A. Yes.

Q. And you were the one that ordered them?

A. Yes.

Q. And you didn't know what way she was going, whether she was going inside or through Caamano Passage, at the time you ordered them, did you?

A. I didn't know—What was the question?

The Court: At the time of purchasing the maps you didn't know whether she was going through Caamano Passage or to the westward of Caamano Passage?

The Witness: No, sir; I did not.

Q. (By Mr. Ryan) Well, you would have used a different set of charts if you went through the Inside Passage, wouldn't you?

A. Well, we had all them charts on board.

Q. Please answer the question.

Mr. Long: I think that is a complete answer, Your Honor.

The Court: No; the objection is overruled.

(Testimony of Erwin P. Larson.)

The Witness: What was the question? (Question read as follows:

“Well, you would have used a different set of charts if you went through the Inside Passage, wouldn't you?”)

The Witness: Why, certainly.

Q. (By Mr. Ryan) Isn't this set of charts that you ordered [2208] before the “Denali” sailed a set of charts going up through the Inside Passage to Alaska? I show you the list that was produced by counsel for the Alaska Steamship Company as being the charts requisitioned in May, 1935.

A. What was the question? (Question read.)

Mr. Bogle: May I see that?

The Witness: The Inside?—

Q. (By Mr. Ryan) Will you answer that yes or no, please?

A. No.

Q. Explain your answer.

A. This requisition that you have here is some for the Inside and some for the Outside; Cape Flattery to Dixon Entrance is outside, then there are some inside—Dixon Entrance to Chatham Straits is outside, that chart. It is a mixed proposition, the whole thing. That is both inside and outside.

Q. There is no chart No. 2828 on that list, is there?

A. I don't think I ordered it. We had one aboard already. No, there is not.

(Testimony of Erwin P. Larson.)

Q. And there is no chart No. 1584 on that list, is there, H.O. No. 1584?

A. What is No. 1584—I don't know what it is.

Q. You are not familiar with Hydrographic Office Chart No. 1584, are you?

A. I might be if I could see it, but like I told you a while ago, how can a man remember two or three hundred charts and memorize them? Show me the chart and I might remember it.

Q. Isn't it a little strange to you that you ordered No. 8102 in May, 1935, when the fact is that same chart had been [2209] ordered and supplied to the "Denali" in 1934, in the very last requisition preceding that?

A. Well, you have your No. 8102——

Q. (Interposing) Read the question. (Last question read.)

Mr. Long: I object to the form of the question, Your Honor. If they want to ask why he ordered it that is one thing, but when counsel asks him if it is a little strange, then I object to the form of the question.

The Court: I think the witness knows the import of it?

Mr. Ryan: I do not think there is anything strange about that.

Q. (By Mr. Ryan) At any rate, in May, 1935, you ordered a new chart No. 8102, notwithstanding that same chart had just been supplied to that ship on the last requisition, isn't that right—in 1934?

(Testimony of Erwin P. Larson.)

A. Show me the chart. That was a new chart in 1935, and that is the reason I ordered it. If I had one for 1934 and there was a new one in 1935, that is the reason I ordered it. [2210]

Q. I see. That is the reason you give, is it?

A. Well, I suppose so. You are telling me—you show me the year that it was printed and say that it was printed in 1935, well, I believe, of course, it was a new chart.

Q. All right. Now, you have no record anywhere of Chart 2828 having been on board the “Denali” on this voyage that she made in May, 1935?

A. No, sir, I have no record of 2828. It was on the ship’s records and on the chart list, and they went down with the Steamship “Denali”.

Q. Can you give the number of any chart that was used in navigating the “Denali” on this voyage from, say, the time that she got outside of the Straits of Juan de Fuca, here at Cape Flattery, on up to the time that she stranded?

A. Well, like I told you, it is awfully hard to remember numbers of charts. Why I remember 2828 is because everybody has been talking about 2828, and I will never forget 2828 as long as I am alive.

Q. And you have been sitting here at this trial all through it, practically, haven’t you, and you have heard——

A. (Interposing) Well, I am bound to remember 2828.

(Testimony of Erwin P. Larson.)

Q. And you have heard it mentioned here during this trial, haven't you, and that is what fixes it in your mind, doesn't it?

A. Not exactly. I will recognize the chart whenever I see it, but the number—I will never forget the number, of course—because it is all 2828.

Q. Now, what was this track supposed to represent that you [2211] laid down on Claimants' Exhibit A-10?

A. On Claimants' Exhibit A-10?

Q. Yes.

A. Which chart is that?

Q. That is this chart. This is the chart that you made the pencil lines on on May 17th. What were you trying to represent there by those lines?

The Court: I am going to let him answer the question, but I am going to ask counsel and request that they finish the cross examination on this subject at one time and not to come back to it again.

Mr. Ryan: I will, Your Honor.

A. I told you, Mr. Ryan, that I laid them lines out to get the distances between the different points, and I always mark them down in a small book that I carry.

Q. Well, you get distances between different points by means of dividers, do you not?

A. Yes, but on a distance like that you cannot go with a pair of dividers and start to measure. You have got to have some lines to follow, don't you?

(Testimony of Erwin P. Larson.)

Q. You were laying down there a track that a ship would be going northward past Triple Island and turning to the westward past McCullough Rocks and going up to Metlakatla, isn't that so?

A. Absolutely not.

Q. That is what the lines that you have drawn there show, do they not?

A. I don't care what they show. You can take it any old way you want to. I am telling you that I laid down them lines to get the distances between the points. [2212]

Q. You just laid down the one set of lines and got the distances, and that is all you did about it?

A. One set of lines? What do you mean?

Q. This line here that reads Northwest $\frac{1}{4}$ North (indicating on Claimants' Exhibit A-10).

A. Well, that is how you get it.

Q. And runs up here Northwest $\frac{1}{4}$ West, and then out past Barren Island and up to Metlakatla, is that right?

A. That is how you get your distances.

Q. And that is what you did. You just laid down that one set of lines like that, didn't you?

A. Yes, I did. Yes, I did.

Q. Now, I will ask you if there is not an erasure on that chart—

A. (Interposing) Sure. There are lots of them.

Q. (Continuing) Showing the course or track that you laid down there, or somebody laid down there was Northwest—

(Testimony of Erwin P. Larson.)

A. (Interposing) I did not——

Q. (Interposing) Just wait just a minute.
Northwest $\frac{1}{4}$ West.

A. I told you awhile ago that I had two or three tracks there.

Q. Wait a minute. Isn't it a fact that there is a track laid down there in pencil——

A. (Interposing) Sure.

Q. Please don't interrupt.

A. Absolutely.

Q. Now, listen to this question.

A. All right.

Q. Isn't it a fact that there was a track laid down on this [2213] chart in pencil North by West—Northwest, rather—strike that, please—isn't it a fact that there was a track laid down on this chart in pencil Northwest $\frac{1}{4}$ West running from the bottom of the chart up?

A. Sure.

Q. Past until you get Triple Island abeam.

A. Yes, sir.

Q. Isn't that so?

A. Why, sure, it is.

Q. And wasn't that further—that first track also laid down so that there was a beam bearing on Triple Island running from that track northwest $\frac{1}{4}$ West?

A. No, siree.

Q. Well, look at it.

A. No, sir; absolutely not.

(Testimony of Erwin P. Larson.)

Q. Look at that erasure there.

A. Where do you get that beam bearing?

Q. That beam bearing from that erased line Northwest $\frac{1}{4}$ West.

A. Where do you get that?

Q. Well, you tell me whether it is there or not.

A. Absolutely not.

Q. Well, look and see.

A. You look yourself and see. Absolutely not.

Q. Did you make the erasures on this chart or not?

A. Sure, I did. I told you that before.

Q. You did?

A. Certainly, I did. What is the use of denying it? I did it.

Q. And you mean to tell me that there is no erased beam [2214] bearing from that line Northwest $\frac{1}{4}$ West of Triple Island Light?

A. No. That line has got no connection whatsoever with these lines. That line was made five minutes to twelve, before I went on watch.

Mr. Ryan: The witness is now pointing to the line up in Caamano Passage.

The Witness: Yes, sir.

Q. (By Mr. Ryan) I am not asking you about that line at all. I am asking you about this line here that is Northwest $\frac{1}{4}$ West that somebody has erased?

A. Yes, sir, I did it.

Q. You did it?

(Testimony of Erwin P. Larson.)

A. Yes, sir.

Q. All right. Now, when that line was there and before it was erased, there was another line——

A. (Interposing) Sure.

Q. (Continuing) Showing a beam bearing of Triple Island Light, wasn't there?

A. In order to get the distance of Triple Island Light when you are abeam you have got to have a bearing there.

Q. Yes, certainly——

A. (Interposing) Well, I did it.

Q. Well, somebody took a beam bearing of Triple Island Light, erased that bearing and erased that course on the bottom of the chart, didn't they, and put this on afterwards?

A. Well, how can you measure distances without you knowing that you are abeam? You have got to draw a line from the light to the abeam and out to the distance wherever [2215] you are.

Mr. Long: Now, I object to counsel's question as it does not assume anything but simply his own statement as to what somebody else did at some other time.

The Court: The objection is overruled. Counsel may ask the witness.

Mr. Long: He is saying, "Isn't it a fact that somebody else did"?

The Court: Objection overruled.

Mr. Long: And the witness says that he did.

Mr. Ryan: I ask the witness to examine the chart and notice the erasure there of the line that is run-

(Testimony of Erwin P. Larson.)

ning up there to the left, North by West $\frac{1}{4}$ West and of the beam—and the erasure of the beam bearing of Triple Island Light.

Q. (By Mr. Ryan) Now, you agree, don't you, that nobody would put down there a bearing of a light unless he had taken it?

A. Why, certainly they would.

Q. They would?

A. Why, certainly. Any man that goes to sea, who will try to navigate a ship, he will lay out his track, and you will always lay a line from his position in to a certain point. If you ever went to sea you would know that.

Q. You lay your bearing down before you take the bearing, is that it?

A. Yes, sir. Why, certainly you do.

Q. That is the only explanation you have for the fact that you have the bearing laid down on that line, isn't [2216] it—to Triple Island Light?

A. What?

Q. Well, what is your explanation of the fact—if you were merely looking for the distances between places, which you could take off with a pair of dividers, how does it happen that on this chart actual bearings are laid out of Triple Island Light by pencil lines?

A. Absolutely not.

Q. Well, I call your attention to the fact——

A. (Interposing) You don't need to call my attention to the fact——

(Testimony of Erwin P. Larson.)

Q. (Interposing) Wait a minute. I call your attention to the fact that on this new line that has been put on here since that one was erased you also have a bearing of Triple Island Light, isn't it so?

A. How would I know——

Q. (Interposing) Isn't that so?

A. Why, certainly.

Q. Now, don't argue with me.

A. Well, don't you argue with me. I did that work and I know what I did, and now you are arguing with me.

Mr. Long: May I ask that the witness explain it once for all, and then we will save a lot of time. He has answered at least part of this same thing six times, and I wish that he would be allowed to make a full explanation of it now.

The Court: Proceed.

Q. (By Mr. Ryan) Now, the fact is, Mr. Witness, is it not, that there was a pencil line on this chart running Northwest $\frac{1}{4}$ West—— [2217]

Mr. Long: (Interposing) I object to that as repetitious.

The Court: Objection sustained.

Mr. Ryan: Well, I haven't finished my question as yet, Your Honor.

The Court: Very well. Finish the question.

Q. (Mr. Ryan) Well, now—if the Court please, if the Court feels that the point has been covered I will go on to something else. I really thought that it had not been——

(Testimony of Erwin P. Larson.)

The Court: (Interposing) I do feel that way, Mr. Ryan, that it has been covered.

Mr. Ryan: All right.

Q. (By Mr. Ryan) Now, you testified on direct examination that you were—say about midnight on the evening of May 18, 1935—that is, on the night of May 18—May 19, 1935, Pilot Obert asked you about what distance abeam Triple Island Light would be passed, did he not?

A. Yes. He asked me, approximately.

Q. Yes.

A. I would not know exactly.

Q. Were you on watch at that time or not?

A. At what time?

Q. At the time that he asked you that question.

A. Well, I was on watch until 12:00 o'clock midnight.

Q. Please answer the question.

A. Yes, I was on watch.

Q. You were?

A. Yes, sir.

Q. And the captain was not on watch, was he?

[2218]

A. Why, the captain was relieved at ten minutes to 12:00 and he went down approximately at that time, and he was relieved by Captain Obert.

Q. Yes, but the captain was not on watch at the time that Pilot Obert asked you what distance Triple Island Light would be passed abeam, isn't that right?

(Testimony of Erwin P. Larson.)

A. No, the captain was not on watch then.

Q. The captain was not what?

A. No, the captain was not on watch then.

Q. The captain was not on watch then?

A. No, sir.

Q. In other words, Pilot Obert had relieved the master?

A. Yes, sir.

Q. And after the master had left the bridge——

A. (Interposing) Yes.

Q. (Continuing) ——Pilot Obert turned to you and said, “Where are we? When do we pass this light abeam that is ahead of us?” Now, he said——

Mr. Long: (Interposing) I want to object to that.

A. No, sir.

Q. (By Mr. Ryan) Or in substance that?

Mr. Long: I want to object to that on the ground——

The Court: Objection overruled.

Mr. Long: Exception.

The Court: Exception allowed.

Q. (By Mr. Ryan) Or in substance that?

A. No, siree.

Q. Well, what did he say to you?

A. Well, it is hard to remember the exact words that he said. [2219] He was not with the captain before I got in there——

Q. (By Mr. Ryan, interposing) I am not asking you before. I am asking you what did he say to you as far as you know after the master left the

(Testimony of Erwin P. Larson.)

bridge. Please answer the question and we will get along faster.

Mr. Long: Well, give him a chance to answer. Let him answer.

Q. (By Mr. Ryan) Please answer the question. What did he say to you?

A. He looked at these charts, and this chart was laying there alongside of the other charts there and he said, "Well, what time do you figure we will be up there?" "The captain told me that we will be there shortly after twelve". And I said, "Well, somewhere around there".

Q. And that is all that you said?

A. Yes, sir.

Q. Now, you said on direct examination that he further asked you how far Triple Island Light would be abeam when you passed her.

A. When he asked me what time it would be, it would be shortly after twelve.

Q. Will you please answer my question.

Mr. Long: Will you let him finish his answer?

Mr. Ryan: I want him to answer my question.

Q. (By Mr. Ryan) Well, you said on direct examination that he further asked you how far Triple Island Light would be abeam when you passed her, didn't you?

A. Maybe he did. It is hard to remember what he did say.

Q. Well, you swore on direct examination today that he did [2220] ask you that question.

(Testimony of Erwin P. Larson.)

A. Well, that is all right.

Q. Did he ask you that question—did he ask that question of you?

A. Yes, sir, he did.

Q. And what answer did you give to him?

A. About approximately ten and a half, or eleven, or eleven and a half miles abeam. That is hard for me to say exactly how far. That was about five minutes to twelve.

Q. You were going off watch, and you didn't even know what your position was, isn't that right, at that time?

A. Well, you could figure your approximate distance off by the time, and looking at the light. There is quite a bit of difference between ten miles and twelve miles, and I said that it was approximately somewhere between ten and a half or eleven and a half or twelve. I don't remember just exactly. I don't remember just exactly what I said.

Q. In other words, the captain walked off the bridge there and left you and Pilot Obert there?

A. And the third mate.

Q. And you didn't know how far you were away from this light, and the pilot didn't know, and then you went into the chart room and tried to figure it out, isn't that right?

A. Certainly not. That is not right.

Mr. Long: I object to this form of cross examination, counsel arguing with the witness. If they knew where they were they would not have to take

(Testimony of Erwin P. Larson.)

a bearing. That is so evident. And the witness said it was approximately. [2221]

The Witness: Certainly not—absolutely not.

Mr. Long: That is why they take bearings.

The Court: Proceed.

Q. Well, after the pilot asked you that question and you gave him that vague and indefinite answer—

Mr. Long: (Interposing) I object to that form of cross examination, if Your Honor please.

The Court: Proceed.

Q. (Continuing) You went into the chart room and tried to figure out on the chart how far you would be abeam of Triple Island Light when she came abeam, didn't you?

A. Absolutely not.

Q. Absolutely not?

A. No. I was in the chart room when I talked to him about the light.

Q. I see. After you gave him that answer then you went into the chart room?

A. I was in the chart room already when he asked me.

Q. I see. And then you gave him that answer that you said, is that right?

A. Yes; approximately.

Q. And then you went to the chart and you laid down this line up through Caamano Passage—that track—isn't that so?

(Testimony of Erwin P. Larson.)

A. It is approximately that distance.

Q. That is not an answer to my question. Read the question.

(Question read as follows:

“And then you went to the chart and you laid down this line up through Caamano Passage—that track—isn’t that so?”)

Q. (By Mr. Ryan) This track of the vessel, isn’t that so? [2222]

A. No, sir.

Q. Well, you testified on direct examination that that is just what you did. Do you want to change your testimony now?

A. I said that that was the line that I laid down, but that was not for the track of the vessel to travel on.

Q. But you laid the line down on the chart, didn’t you—

A. (Interposing) Why, sure.

Q. (Continuing) After Pilot Obert had asked you what distance abeam the ship was going to pass Triple Island Light?

A. Yes, I did.

Q. And you went to this chart and you laid it down on this chart?

A. Yes, sir. But there was another chart for him to use, with the tracks laid down already.

Q. I am referring when I say, “on this chart” to Claimants’ Exhibit A-10. Now, after Pilot Obert, the watch officer coming on—the senior watch offi-

(Testimony of Erwin P. Larson.)

cer coming on—asked you that question and you went to lay down this track of the vessel through Caamano Passage, why didn't you lay it down on this supposed chart 2828 that you have been talking about?

Mr. Long: Just a minute, now. This matter of a supposed chart—

A. (Interposing) I just told you that the captain had the course laid down on his chart for the ship to travel on. I had nothing to do with the navigation whatsoever of the Steamship "Denali" so far as laying the course or changing that course was concerned—so far as laying [2223] the course or changing that course goes.

Q. (By Mr. Ryan) Well, if you did not have anything to do—

Mr. Long: (Interposing) Just a minute. Will you just let me finish my objection?

Mr. Ryan: What is your objection?

Mr. Long: I ask that that portion of the question about a supposed chart be stricken. All the testimony is to the contrary.

The Court: Objection overruled.

Mr. Long: Exception.

The Court: Exception allowed.

Q. (By Mr. Ryan) Well, all you have to do to lay off a distance is to use a pair of dividers, isn't it?

A. I didn't hear the question.

(Testimony of Erwin P. Larson.)

Mr. Ryan: Read the question.

(Question read)

A. Not as far as I am concerned.

Q. Isn't that so?

A. No, sir.

Q. Well, if the track is laid down on the chart, all you have to do is to take a pair of dividers and set them down between the two points you want to know the distance between, and then hold the dividers over there along the scale on the side of the chart opposite that, isn't that so?

A. No.

Q. Is that a pair of dividers (indicating)?

A. Yes.

Q. And you mean to tell me that you cannot tell the distance [2224] between Triple Island Light and when the "Denali" was abeam on this—

A. (Interposing) Well, now, Mr. Ryan—

Q. (Interposing) Now, listen to the question. You cannot tell the distance between Triple Island Light and when the "Denali" was abeam Triple Island Light by merely using that pair of dividers?

A. What is your question again?

Q. I say that you cannot tell me the distance between the Triple Island Light and the "Denali", when abeam, by using that pair of compasses?

A. I don't understand your question.

Q. Well, does the track—isn't it passing Triple Island Light?

(Testimony of Erwin P. Larson.)

A. Yes, sir.

Q. Now, what is the distance from Triple Island Light to that track when the vessel that is on that track passes abeam?

A. That is not the way I measure the distance between two different points. Your dividers is too short to reach between the two different changes. Can't you see it yourself?

Q. Do you understand my question?

A. No, I don't.

Q. (Mr. Ryan) Read it again.

(Question read as follows:

“Now, what is the distance from Triple Island Light to that track when the vessel that is on that track passes abeam?”)

A. On which track?

Q. The track that is laid on that chart, Claimants' Exhibit [2225] A-10 that you are holding in your hand.

A. Will you point out the track?

Q. Can you not see the track? You laid it down yourself.

A. Well, there are two tracks.

Q. There are two tracks passing Triple Island Light?

A. Yes, sir. Which one do you want? There is one that I erased.

Q. That somebody erased.

A. I did.

(Testimony of Erwin P. Larson.)

Q. And it is an ordinary thing, when you are navigating a ship, to erase lines when you change your mind afterwards, or when you get a different bearing which throws you out, is it?

A. I don't know what you are talking about. That is not a navigating chart. That is what I had of my own for my own use.

Q. Now, lay out on that chart the distance from Triple Island Light to this course. There is only one course there Northwest $\frac{1}{4}$ North, that has not been erased. Lay out on that chart the distance from Triple Island Light to that course.

A. A little better than ten miles.

Q. You were able to do that merely with that pair of dividers, were you?

A. Yes, sir, but I could not——

Q. (Interposing) If you wanted the distance between any two points you could have done that with a pair of dividers, isn't that so?

Mr. Long: Let him finish his answer. If Your Honor please, I object to this form of examination. This man [2226] is screaming at the witness.

Mr. Ryan: I am not screaming at the witness, if Your Honor please.

The Court: Well, I do think that you were rather loud——

Mr. Ryan: (Interposing) Well, I am sorry.

Mr. Long: Do you wish to finish your answer, Mr. Larson?

The Witness: No, sir.

(Testimony of Erwin P. Larson.)

The Court: Proceed, ask another question.

Q. (By Mr. Ryan) Now, when Pilot Obert asked you at what distance abeam Triple Island Light would be when the "Denali" would pass it abeam in a few minutes, and you could not give him the answer to that question——

A. (Interposing) No.

Q. (Continuing) ——and you went into the chart room to try to figure it out on the chart, why didn't you lay down that line running up through Caamano Passage on the chart which was being used to navigate the ship so that you would get everything right?

(Witness does not answer)

Mr. Long: Just explain it, if you wish.

The Court: Explain it, if you want to.

The Witness: I have been explaining to you, Mr. Ryan, time after time, that them lines have nothing to do with the navigating of the ship.

Mr. Ryan: I move that that be stricken as not responsive.

The Court: It may be. Answer the question with respect to the chart that was used in navigating the [2227] ship.

A. What is the question?

Mr. Ryan: Read the question.

(Question read as follows:

"Now, when Pilot Obert asked you at what distance abeam Triple Island Light would be when the 'Denali' would pass it abeam in a few

(Testimony of Erwin P. Larson.)

minutes, and you could not give him the answer to that question, and you went into the chart room to try to figure it out on the chart, why didn't you lay down that line running up through Caamano Passage on the chart which was being used to navigate the ship so that you would get everything right?")

A. I never had anything to do with navigating the ship. I didn't have no right to go in there and draw lines there for the ship to follow.

Q. (By Mr. Ryan) Well, if you did not——

The Court: (Interposing) I think that that has been stated by the witness a number of times.

Mr. Ryan: But that answer is not responsive, if the Court please.

The Court: Well, the Court thinks it is.

Mr. Ryan: All right.

Q. (By Mr. Ryan) Well, if there was no Chart 2828 in the chart room, that would be an explanation for your failure to use it, wouldn't it?

Mr. Long: That is objected to as arguing with the witness. Further, it is indefinite. What time are you referring to?

Q. (By Mr. Ryan) At that time after Captain Obert asked you that question and you were not able to answer it. [2228]

Mr. Long: There is no such testimony. We will show, and we have already shown by three or four witnesses that the chart was there.

(Testimony of Erwin P. Larson.)

The Court: Objection overruled. Answer the question.

A. What was the question?

(Question read as follows:

“Well, if there was no Chart 2828 in the chart room, that would be an explanation for your failure to use it, wouldn’t it, at that time after Captain Obert asked you that question and you were not able to answer it?”)

A. I don’t know what you are talking about.

Q. (By Mr. Ryan) You know the question that Pilot Obert asked you, don’t you?

A. How could I answer that question, when the ship was not abeam yet? I didn’t know how far she was going to be off. He would find it out himself when he got the light abeam.

Q. Weren’t you the officer that took the bow bearing of Triple Island Light?

A. Yes, sir.

Q. Why did you take the bow bearing of Triple Island Light?

A. Because the captain told me to.

Q. You didn’t know what the purpose of it was then, did you?

A. Why, certainly I did.

Q. What was the purpose?

A. Why, to get your distance off.

Q. I see. And then the officer coming on watch asks you the question and you say, “I don’t know.” Is that your answer, substantially? [2229]

(Testimony of Erwin P. Larson.)

A. Well, how do I know? No one can tell before you get the light abeam if you take a four point bearing for that purpose——

Mr. Long: (Interposing) I submit that counsel is attempting to mislead the witness.

Mr. Ryan: Now, wait a minute.

Mr. Long: Wait a minute yourself.

Mr. Ryan: Now, if the Court please, I object to that statement of counsel. I am not attempting to mislead the witness at all.

Mr. Long: Well, you know that that is not——

Mr. Ryan: (Interposing) I don't think that the witness has been quite frank, but I have not attempted to mislead the witness at all, and I ask that that remark of counsel be stricken.

The Court: Yes, it will be stricken.

Mr. Long: The four point bearing is taken to get the distance off of an object.

Mr. Ryan: Let the witness testify. Don't suggest anything to him.

Mr. Long: The testimony has been heard at least six or eight times to that effect. This witness has testified that he took the bow bearing by a four point bearing and was to complete that some time after 12:00 o'clock, after he got off his watch, and I submit, if Your Honor please——

Mr. Summers: (Interposing) Now, if Your Honor please, I would like to say——

The Court: (Interposing) Just a minute. There are two lawyers here. You may resume your seat,

(Testimony of Erwin P. Larson.)

Mr. [2230] Summers. Is there anything further you wish to ask him, Mr. Ryan?

Mr. Ryan: No.

The Court: The objection of counsel for the petitioner is overruled. And you may finish the answer, witness, if you haven't finished it. If it has not been finished the Court will allow the witness to do so. Now, Mr. Ryan, I wish you would close your cross examination on this point because it is highly repetitious.

Mr. Summers: May I interrupt to say——

The Court: (Interposing) I think counsel here can take care of matters.

Mr. Summers: I do not want to do any cross examining, or anything like that, but I want to register an objection on behalf of the claimants, and I request a ruling from Your Honor in regard to that objection. This claimant objects and asks for the privilege of registering an objection to the conduct of counsel for the petitioner in suggesting to petitioner's witnesses what the future testimony should be. In other words, it seems to me that the record in this case shows that time and time again Mr. Long has gotten on his feet and in the guise of an objection has suggested an explanatory answer to the witness being cross examined. I think that the claimants are entitled to protest that sort of conduct, and I think the Court should instruct counsel not to do that.

Mr. Long: I ask that those remarks of counsel be stricken from the record. I have at no time

(Testimony of Erwin P. Larson.)

gotten on my feet and suggested answers to the witness, and the [2231] record shows that, and I think that counsel's remarks should be stricken.

The Court: Neither one will be stricken. Let the record be as it has been made. The trouble is, of course, that there are too many assisting counsel. Let those who have been delegated to examine and cross examine this witness attend to the record and proceedings with respect to that, and the others will be given an opportunity to consult with them at the proper time in a reasonable manner. Proceed with the examination, and proceed with it expeditiously, if you will.

Mr. Ryan: What was the last question and answer?

(Question and answer read as follows:

“Q. And then the officer coming on watch asks you the question, and you say, ‘I don't know’. Is that your answer, substantially?

A. Well, how do I know? No one can tell before you get the light abeam if you take a four point bearing for that purpose——”)

Q. (By Mr. Ryan) Now, Mr. Witness, is not your answer that you have just given incorrect in this, that if the track of your vessel is laid down by a line on the chart, and if you have taken a bow bearing of a light, all you have to do, in order to ascertain the distance abeam, if that track was correct, is merely to draw a line at right angles to that light—at right angles to that track to that light?

(Testimony of Erwin P. Larson.)

A. Never. Absolutely not. How could you determine it on a log of a ship, or the set of the tide or current? No man could navigate the way you are suggesting to [2232] navigate. No man could.

Q. You do not think that this line that is drawn on this chart here by somebody——

Mr. Long: (Interposing) On Claimants' Exhibit A-10.

The Witness: I did that.

Q. (By Mr. Ryan) ——from this course to Triple Island Light gives you the distance abeam while she is on that course?

A. Well, suppose she is on that track. Yes.

Q. Answer the question.

A. What is the question?

(Question read as follows:

“You do not think that this line that is drawn on this chart here by somebody from this course to Triple Island Light gives you the distance abeam while she is on that course?”)

A. Suppose she is on that track, yes.

Q. Your answer is “Yes” to that, isn't it—if she is on that track this line shows her distance abeam, doesn't it?

A. Which line?

Q. This line at right angles to that course running to that light (indicating on Claimants' Exhibit A-10).

(Testimony of Erwin P. Larson.)

A. That all depends where you measure from. If you measure from there to there (indicating on Claimants' Exhibit A-10).

Q. So if you were asked a question by a watch officer, "What distance abeam will we pass this light that we are coming to?" And if you had already laid down on the [2233] chart the bow bearing, and if the track of the vessel were laid right on there, and the ship were continuing on that track, all you would have to do would be to take and draw a line at right angles to that track running through the light, isn't that right?

A. No, sir.

Q. And you could give him the answer?

A. No, sir.

Q. No?

A. No, sir. The ship will never run like a street car on two street car tracks. It never has happened in history.

Q. In other words, you would not lay down on a chart a bearing until after you had taken it, isn't that right?

A. Well, that thing——

Q. (Interposing) Will you answer that question now so that we can make some speed here?

A. Well, I cannot answer that. I don't know what you are talking about.

Q. Don't go off to something else. If you don't understand my question, say so.

A. I don't know what you mean.

(Testimony of Erwin P. Larson.)

Mr. Ryan: Read the question.

(Question read as follows:

“In other words, you would not lay down on a chart a bearing until after you had taken it, isn't that right?”)

A. What is that?

Q. (By Mr. Ryan) You would not lay the bearing down on a chart and in pencil draw a line from it up to the track until after you had taken the bearing, would you? [2234]

A. But that line is not a bearing. That is the distance off from the light to the track. That is not a bearing.

Q. You don't think that these lines that are drawn on this chart, Claimants' Exhibit A-10 indicate a bearing?

A. Certainly not.

Q. Well, wouldn't it be the same kind of a line that you would draw if you were drawing a bearing of the light?

A. No, sir.

Q. What kind of a line would you draw if you took a bearing of a light, and it was abeam, and you wanted to lay it down on the chart?

A. After I got it abeam I would have my four point bearing—when I got her abeam I would have my time and my log run and I would not have to lay down a line to know the distance of it. I would get it from the time and the log run.

(Testimony of Erwin P. Larson.)

Q. Do you mean to say, as a licensed officer on a ship, that when you took a beam bearing of a light you would not lay it down on a chart?

A. Maybe I would and maybe I would not.

Q. Well, if you didn't you would not know where it was, isn't that so?

A. No, that is not so.

The Court: Proceed with some other subject.

Q. (By Mr. Ryan) Now, when you checked these charts that came out of this box, or wherever they came from, for the "Denali", you say that they were all there that she had then—is that what you want to say—she had a complete set?

A. Yes, sir. She had a complete set. [2235]

Q. Then why did you order some more?

A. Well, I just told you that awhile ago—I maybe wanted some new charts for certain districts.

Q. Do you mean to say that these charts that you ordered were all new charts?

A. No.

Q. Then why did you order them?

A. Well, because we wanted them renewed for some certain reason.

Q. You wanted up to date charts for the voyage, isn't that right?

A. There was some reason. I don't know exactly why I ordered them—I don't remember exactly why I ordered them.

Q. Wasn't that the reason? If you bought a new set of charts you would take them already corrected

(Testimony of Erwin P. Larson.)

up to date by the Government, and they would be right up to date when you sailed, isn't that right?

A. No, siree.

Q. You didn't care whether they were up to date or not, is that it?

A. We had all the charts on the Steamship "Denali" corrected up through the Notices to the Mariners. It is absolutely not necessary whenever there is a little correction or a little change on a certain chart, to buy a new chart. That is why we get the Notices to the Mariners.

Q. Well, why did you buy this brand new set of charts?

A. I told you that we wanted—we wanted the charts new for some certain reason. Right now——

Q. (Interposing) Give us the reason right now.

[2236]

A. I don't remember it now here.

Q. Now, the petitioner's home office here took on itself the job of supplying notices to mariners to these ships, didn't it, by sticking them in some kind of a pigeon hole down in the office down here?

A. The company did?

Q. Yes.

A. I don't know how you get them, but every ship that I have ever been on and seen, they get them sent. I don't know how they get it from the Government. The government sends them out in some way or another, but I couldn't tell you how.

Q. But the petitioner's home office here—that is,

(Testimony of Erwin P. Larson.)

Murphy's or Tracy's office, is the one that supplies them to you through this pigeon hole affair, isn't it?

A. Well, if I didn't get them, I would go some place else to get them.

Q. Isn't that so?

A. What is the question?

(Question read as follows:

“But the petitioner's home office here—that is, Murphy's or Tracy's office, is the one that supplies them to you through this pigeon hole affair, isn't it?”)

Q. (By Mr. Ryan) Isn't that right?

A. No, sir.

Q. Well, you have testified that that is so.

A. I have testified that we got them through the mailbox, yes.

Q. In the petitioner's home office, here in Seattle, isn't that right? [2237]

A. Yes, sir.

Q. That is Mr. Murphy's or Mr. Tracy's office, isn't it?

A. No. It is the main office.

Q. Well, Mr. Wilson's office?

A. No. It is the main office.

Q. It is the main office?

A. Yes, sir.

Q. Well, that is all right. Now, you mentioned some report that you gave to the master, and you said, “I told him that I was satisfied in my own mind that the compasses were in good condition”.

(Testimony of Erwin P. Larson.)

What was the time that you gave that statement to him—that report that you say was not in writing?

A. It is hard to remember exactly the exact date. It was during the time in Seattle.

The Court: At this time we will take a ten minute recess.

(Recess) [2238]

Q. (By Ryan) When did the “Denali” start navigating on chart H.O. 2828, if you know, using that chart for navigational purposes?

A. I couldn't remember what time she started.

Q. What chart was being used for navigating the “Denali” up to the time they began using chart H.O. 2828, if you know?

A. Oh, I don't know.

Q. Were you ever asked by Pilot Obert to take an azimuth on a North $\frac{3}{4}$ West, or a North heading of the “Denali”?

A. Not that I can remember.

Q. Did you ever take an azimuth on a North $\frac{3}{4}$ West heading of the “Denali” or a north heading of the “Denali”, after the ship went out of the Straits of San Juan de Fuca, and on this voyage?

A. I took some on Northwest.

Q. On Northwest?

A. Yes.

Q. On what day did you take that, an azimuth on that heading?

A. The 17th or the 18th.

(Testimony of Erwin P. Larson.)

Q. That is 45 degrees away from North, isn't it?

A. Yes.

Q. The ship was never on a course North after passing out of Cape Flattery on her way up to the point of the stranding, was she?

A. That I couldn't tell you. I have no idea.

Q. So far as you know, she was not, was she?

A. No; not as far as I know, no.

Q. Was she ever on a course North, so far as you know, from the time of sailing from Pier 2?

[2239]

A. Well, she was on the North outside of West Point.

Q. That is the only time you can think of, isn't that right?—That you can give us, I mean?

A. Yes; that is the only time I can think of.

Q. You joined the ship on May 13th—what date did you join the ship?

A. Well, officially—

Q. (Interposing) No; I mean actually joined the ship, go down to perform work on her.

A. Well, it is hard to answer that question the way you are asking me. I joined the ship the day before, but I wasn't officially second mate there. I was on board the "Denali" a day or two before. I can't remember exactly.

Q. What is the first day and the time of day that you went on board the "Denali" in connection with this voyage?

A. The first time, maybe a day or two before.

(Testimony of Erwin P. Larson.)

Q. Give us the date.

A. That would be the 11th or 12th. I was over in the yard and on all the ships. I couldn't exactly say when I went on board the "Denali". I was working in the yard at the time.

Q. How long did you stay on the "Denali" that first time you went on board of her?

A. How long?

Q. Yes; and who was with you?

A. Who was with me?—I couldn't remember——

Q. (Interposing) Do you remember how long you stayed on her the first time you went on board?

A. It is hard for me to remember how long I stayed on the ship. We go from one ship to the other in the yard. [2240]

Q. When did your duties start, when did your wages start as an officer of this ship, the "Denali"?

A. May 13th.

Q. On May 13th?

A. Yes.

Q. And you went to work on the ship on what day, what time of day on the 13th?

A. Well, 6:00 in the morning.

Q. How long did you stay on the "Denali", working, on that day?

A. Oh, until 10:00 or 11:00 o'clock, maybe.

Q. At night or in the morning?

A. In the morning.

Q. Then what did you do; go home, or what did you do?

(Testimony of Erwin P. Larson.)

A. Gosh, I don't remember. I went home to get some clothes that day—oh, I can't remember.

Q. I am trying to find out the fact. You had some kind of a time-book or something you were referring to on direct examination.

A. Time-book?

Q. Didn't you have some book you were referring to to get these dates accurately?

A. No.

Q. Well, you went to work at about 6:00 a. m. on the morning of May 13th, and stayed on duty there until about 10:00 or 11 o'clock a. m. on that day, and then what did you do, then where did you go?

A. I went home for my clothes, some of it.

Q. Then when did you go back to the "Denali" the next time and go on duty? [2241]

A. Well, the next time she moved.

Q. Give us the date.

A. When she moved that afternoon.

Q. May 13th?

A. Yes.

Q. At what time?

A. In the afternoon some time.

Q. Now, I am trying to get the date and the time of day, and the quicker you give it to me the quicker we will get along.

A. Let me have the log book and I can tell you. I can't remember exactly the time I went back to the ship.

Q. I just want to find out when you started work and left work on each of those dates.

(Testimony of Erwin P. Larson.)

A. We left at 7:25.

Q. On what date?

A. May 13th.

Q. At 7:25 a. m. or p. m.?

A. A. M.

Q. At 7:25 a. m., May 13th, you started work, and then how long did you continue work?

A. I say we left at 7:25, and I went to work at approximately 7:00 o'clock, we will say.

Q. You stayed on the work how long?

A. Until 10:00 o'clock.

Q. Then when did you next go on duty on the "Denali"?

A. At 2:40 to 3:10.

Q. That afternoon?

A. Yes.

Q. Of May 13th? [2242]

A. Yes.

Q. Then where did you go?

A. We went from the Arden Salt Dock——

Q. (Interposing) No; I am asking you where you went when you went off duty.

A. I may have gone home to see my wife. I can't remember.

Q. That is what I am trying to get at. I want to find out where you were, whether you were on duty or not?

A. I told you I was on duty from 2:40 to 3:10.

Q. Then where did you go?

Mr. Long: I object to that.

(Testimony of Erwin P. Larson.)

The Witness: I cannot remember. It was my own private time; I cannot remember.

Q. When did you next go back on duty on the "Denali", after 3:10 p. m. on May 13th?

A. At 6:10 in the evening.

Q. That same evening?

A. Yes.

Q. How long did you stay on duty?

A. Until 6:30; 20 minutes.

Q. Then where did you go? Did you go home?

The Court: You can simply say if you recall.

The Witness: I cannot remember where I went to.

The Court: All right, then.

Q. (By Mr. Ryan) When did you next go back on duty on the "Denali"?

Mr. Long: I object to all of this, Your Honor, as wholly immaterial.

The Court: The objection is overruled.

Mr. Long: This is before the Articles were signed. [2243]

The Court: The Court has ruled, Mr. Long.

Mr. Long: I just want to point that out to Your Honor.

The Court: Take your seat, Mr. Long.

The Witness: On May 14th, in the evening, from 7:40, approximately, until—I think I stayed on board the ship—I was not on duty then, exactly—I stayed on board the ship and straightened out my clothes and put them away.

(Testimony of Erwin P. Larson.)

Q. (By Mr. Ryan) All right. The next morning, then, what time did you go on duty, May 15th?

A. Oh, we left——

Q. (Interposing) I am asking when you went on duty, and do not get in a lot of irrelevant matter.

A. 4:00 or 5:00 in the morning.

Q. 4:00 or 5:00 in the morning?

A. Yes.

Q. How long did you stay on duty of May 15th?

A. I stayed on duty until 4:30 in the morning.

Q. Then where did you go?

A. I don't know.

Q. Then when did you next go back on duty on the "Denali"?

A. At 7:55.

Q. Now, please give us the date, and whether it was morning or P. M., in each instance, so that I will not have to ask you.

A. It was A. M.

Q. 7:55 A. M.?

A. Yes.

Q. What is the date? Please give the date and the time of [2244] day in each instance, so that I will not have to ask you.

A. Wednesday, May 15, 1935, at 7:55 a. m.

Q. Do not read the book, but tell me when you went on duty. You went on duty at 7:55 on May 15th, and how long did you stay on duty?

A. Until 8:20.

(Testimony of Erwin P. Larson.)

Mr. Long: Just a minute, please—

The Court: Just a minute, Mr. Ryan.

Mr. Long: I think the witness said he doesn't remember, but he is reading the book as to the time the ship moved.

The Court: The objection is sustained. He may read from the book, in view of the fact that it is in evidence, and in view of the fact that the witness says that he does not specifically remember.

Mr. Ryan: You mean the objection is overruled?

The Court: I mean the objection is sustained to you declining to let him read from the book.

Mr. Ryan: But when he says he doesn't know—well, pardon me. Of course I have no objection.

Q. (By Mr. Ryan) When did you go off duty on May 15th—no; you say you went off duty at 8:20 on May 15th—when did you next go on duty on the “Denali”?

A. Well, the best I can remember would be May 16th, at 5:43 a. m.

Q. So you left the ship at 8:20 a. m. on May 15th, and stayed away until 5:43 a. m. on May 16th, is that correct?

A. No; I don't say that I did. I don't know what I did that day. There is nothing in the book, and I cannot account for my time. [2245]

Q. You were not on board the ship at all on the day before sailing, were you, from 8:20 a. m. until 5:43 a. m. on May 16th, when she sailed?

(Testimony of Erwin P. Larson.)

A. I certainly was aboard, because I slept on board the night before we sailed, so I must have been on board.

Q. Were you on duty at any time?

A. I cannot remember, the day before. I might have been on duty that evening.

Q. Well, give us your knowledge, or your best recollection.

A. That is what I am giving you.

Q. What your duties were on that day, if any.

A. Well, I cannot tell you exactly what I did that day. I might have been on duty that evening, and I might not have been on duty that evening. I know I was on board the ship the night before we left.

Q. What are your duties as second officer in connection with the sailing of the ship?

A. You mean leaving port?

Q. Yes; getting ready to leave from Pier 2.

A. Leaving Pier 2 I would either be back aft taking in the lines, or on the bridge of the "Denali", as I would be on any ship, handling the telegraph or taking the time we left.

Q. When did you start in performing those duties in connection with the sailing from Pier 2?

A. Thursday, May 16th.

The Court: What time?

The Witness: At 5:43 a. m.

Q. You did not perform any duty before that, on that ship?

(Testimony of Erwin P. Larson.)

A. Not that day. [2246]

Q. Are you sure about that? What time did you get up that morning, the sailing date?

A. They may have called me shortly after 5:00, and I went up and had my coffee.

Q. I am not asking you to guess; if you do not know, say so, or if you do know then tell us.

A. I went on duty at 5:43, that is all I can tell you. I don't know exactly.

Q. On the day you left your last duty on the "Denali" before that,—you went on duty at 5:43 a. m.?

The Court: If you know.

Q. If you know.

A. I couldn't remember exactly my last duty before that time; I couldn't do that.

Q. You remember in great detail everything you did until the day before sailing, and the night of sailing, and then you don't know what on earth you were doing, is that right?

Mr. Long: I must object to that remark.

Mr. Ryan: Strike it; I will withdraw it.

The Court: The objection is sustained, and the remark is stricken.

Mr. Long: I move that it be stricken.

The Court: It is stricken.

Q. (By Mr. Ryan) How did you establish the distance off Bonilla, by reading the log or by the time and speed of the ship?

A. I did.

(Testimony of Erwin P. Larson.)

Q. How did you establish the distance off Bonilla?

A. Off Bonilla Island? [2247]

Q. Yes.

A. Well, at 6:43 p.m. we took the four point bearing, read the time on the log.

Q. You took it by reading the log, is that right?

A. Well, we took a four point bearing, and at the same time we took the time by reading the log.

Q. That distance abeam of Bonilla Island was taken by you, wasn't it?

A. Yes.

Q. And you took it by taking your bow bearing and having the log read then, is that right, and then by taking your abeam bearing and taking the log reading at that time?

A. After we got it abeam, yes.

Q. That is the way this particular bow and beam bearing was taken?

A. I think so. That is the only way you can take a four point bearing.

Q. What was the distance bearing of the "Denali" from Bonilla Island at that time?

A. Oh, five miles.

Q. You are absolutely certain of that position, are you?

A. Well, certainly, of the position—well, you are never certain of a position off Vancouver or in Alaska waters, where there is a strong current

(Testimony of Erwin P. Larson.)

or tide on you. Your log will never show the same, she will never be correct. You do not know the strength of the tide.

Q. So you are not even certain that the bow and beam bearing that you took off Bonilla was right?

A. She might have been right and might have been out.

Q. You were not sure? [2248]

A. You are never sure on anything in Alaska.

Q. Did you take a bearing on Oval Bank Buoy Light?

A. Oval Bank Buoy, we took it when she was abeam.

Q. Did you take a bow and beam bearing on it?

A. No, we did not.

Q. You did not take a bow and beam bearing on Oval Bank Light?

A. No.

Mr. Long: You can explain that.

The Witness: At that time of the evening it was not quite dark enough, and we was a little bit too far off, in my estimation, to see the Buoy, up until we just got abeam. The Buoy will never show more than five or six miles, and in my opinion it was more than that off.

Q. So you never established the distance the "Denali" was off Oval Bank Buoy, did you?

A. No; we couldn't do it.

Q. At what time did you sight Triple Island Light, that is, the light itself?—Not the loom of the light.

(Testimony of Erwin P. Larson.)

A. Oh, around 20 minutes after 10:00, or maybe ten to 5:00, when we were there—10:30, somewhere along there. I wouldn't say exactly the minute. We saw the light quite a bit before, the reflection of it.

Q. I tried to make the question clear——

The Court: Have it read again.

Q. I want you to not mention "reflected", "reflection" or "glow" in your answer to this question. I am asking you now, when did you first see the light itself?

A. Between——

Q. (Interposing) Just a minute, so I can make this clear; [2249] you know you can only see a light a certain distance on account of the curvature of the earth, don't you?

A. Yes.

Q. Now, I am asking you, when you first saw Triple Island Light, the light itself—not any loom or glare or glow or reflection—now, tell me that, if you know it, and if you do not know it you can say so.

A. Yes. Approximately between 10:20 and 10:30, some time.

Q. That is P. M. on May 18th, 1935, is that right?

A. Yes; sure, it was P. M.

Q. When did you first sight the loom or reflection of Triple Island Light on the evening?

A. Shortly after 10:00.

Q. About what time?

(Testimony of Erwin P. Larson.)

A. Well, shortly after 10:00; from 10:00 to 10:10.

Q. There is no entry in your log book of you either sighting the loom of Triple Island Light, or sighting the light itself?

A. No.

Q. And you were the officer on watch?

A. No.

Q. You were making the entries in the log book?

A. Yes.

Q. Why didn't you enter the time you sighted that light?

A. I never saw them do it in the American Merchant Marine.

Q. When you sight a light you know you are on the extreme of visibility of that light, don't you?

A. Why, you wouldn't—

Q. (Interposing) If you are heading up there toward the light? Answer the question. [2250]

A. Do you know—

Q. (Interposing) Do not ask me that; answer the question, please.

A. No, you wouldn't know.

Q. You wouldn't know?

A. No.

Q. If I am heading toward a light at night—

A. Yes.

Q. (Continuing) And I suddenly see it—

A. Yes.

Q. (Continuing) —that doesn't indicate anything at all as to the fact that I am at the extreme

(Testimony of Erwin P. Larson.)

of visibility of that light as shown on the chart, does it?

A. Why——

Q. (Interposing) Answer that yes or no.

Mr. Long: Answer it the way you can answer it.

The Court: The Court will instruct the witness, Mr. Long, and do not interrupt except to make a legal objection.

Mr. Long: I object to the form of the question.

The Court: The objection is overruled. If you can answer the question you may do so.

The Witness: Read the question. (Question read.)

Mr. Long: I still object to the form of the question.

The Court: The objection is overruled.

The Witness: I cannot answer the question the way you have got it shaped. I can explain it.

The Court: You may do that now.

The Witness: Going by a light one day or one night [2251] you will see the light itself blink—the loom of the light is 15 miles—you will see it, maybe the loom of the light that day, or that very night, 12 or 13 or 14 miles. You go by the very same light the next trip and you might see the same light 16 or 18 miles. It all depends on the atmosphere and the air. Just because the light is marked 15 or 16 miles, or 12 miles on a chart, and in a light list, that has nothing to do with how far you can see a light, absolutely nothing.

(Testimony of Erwin P. Larson.)

Q. If it is a clear night, so that there is nothing peculiar about the atmosphere, the fact that you sighted the light indicates to you nothing?

A. No.

Q. When you examine the chart and see what the Government has said is the limit of visibility there, that you are on——

A. (Interposing) No.

Q. (Continuing) ——on the arc described at a point of the extreme visibility of that light, as shown on the chart——

A. (Interposing) Absolutely, no.

Q. (Continuing) ——it doesn't indicate anything at all about it?

A. It don't indicate anything to me.

Q. You ignore the chart in that respect?

A. No; I do not. I am using my head, that is all.

Q. Isn't every one of these lights——doesn't it have right underneath it the distance it is visible?

A. I just testified, I told you that it has.

Q. That is so, isn't it; no matter how powerful the light, you can only see the light itself a certain distance on [2252] account of the curvature of the earth, isn't that so?

A. No. It might be different air the next time you are going by, and if it is a nice clear night you might only be 12 miles off the light, and it is supposed to show 15, and you don't see it.

Q. You do not dispute that the earth is round, do you?

(Testimony of Erwin P. Larson.)

A. No.

Q. Then what are you talking about?

The Court: Proceed with another question.

Q. Do you know what time Triple Island Light was abeam the "Denali"? No; I do not ask you to read what somebody did, but I am asking you if you know of your own knowledge.

A. Shortly after 12:00—12:06 or 12:08, whatever time it was.

Q. Did you see it when it was abeam? Did you see when Triple Island Light was abeam of the "Denali"?

A. No, I did not.

Q. Where were you?

A. Down in my room, maybe.

Q. Do not put in "maybe"—if you do not know, say so, and if you do know you can say so.

A. I don't know where I was at.

Q. Can you give us your best recollection as to where you were when Triple Island Light was abeam on that night?

A. I just told you I might have been down in my room, or might have been down for a cup of coffee.

Q. Your answer is that you do not know where you were, is that it?

Mr. Long: If Your Honor please, I object to this [2253] constant argument with the witness.

(Testimony of Erwin P. Larson.)

The Court: The objection is sustained.

Q. It was abeam within three minutes after you left the bridge, wasn't it, according to the log book?

A. I don't know. You wouldn't let me look in the log book.

Q. When did you leave the bridge on the morning of May 19, 1935?

A. One or two minutes after 12:00.

Q. How many minutes?

A. One or two minutes.

Q. I thought you said three or four minutes after 12:00.

A. No; I said one or two minutes.

Q. You want to get it down to one or two minutes now?

Mr. Long: Just a minute; there is a proper way to examine the witness, and I resent counsel's continued——

Mr. Ryan: (Interposing) I withdraw that, Your Honor.

The Court: It will be stricken. Mr. Long, you should use more technical language, and also more self-control.

Mr. Long: I resent the inference of counsel's remarks.

The Court: It is not for you to resent anything. The Court will attend to the resentment and the proper conduct of the trial.

(Testimony of Erwin P. Larson.)

Mr. Long: I am making the record and that is all I have in mind.

The Court: The use of the word "resent" is out of keeping with the proper atmosphere of the court room, [2254] and you gentlemen must cease this display of anger or temper in this courtroom. And I will say this to all connected with the case, that the next lawyer connected with this case who displays towards or against opposing counsel any anger or hot temper hereafter is going to be held for contempt. That applies to everyone connected with this case. Proceed.

Q. (By Mr. Ryan) Do you know at what distance abeam Triple Point Light would have been if the "Denali" continued on the track or course which was laid down on the chart that you and the captain were using in navigating the "Denali" on the night of the stranding?

A. I did not use any chart in navigating, because I never did no navigating on course or tracks at any time. The captain was the navigator on my watch.

Q. You do not even now know at what distance abeam Triple Point Island was expected to be passed by the "Denali" on the night that you were on watch, is that so?

A. No; I don't remember.

Q. You don't know now?

A. No; I can't remember.

Q. Did you ever know?

(Testimony of Erwin P. Larson.)

A. Well, I may have—it is hard to remember—I wouldn't know. It is between the captain and the pilot, wherever they go.

Q. On direct examination you referred to a personal timebook, to refresh your recollection.

A. Time-book?

Q. Yes.

A. I think you are referring to the time cards from the [2255] West Seattle yard (showing).

Q. That is right; that is it. Now, can you look at those time cards and tell me when you were on duty between May 13th and May 16th, 5:30 a. m.?

A. Here is the time cards for the time of the inspection of the S.S. "Denali", January 29 and January 31, 1935.

Q. And that is all they are for; that is the only period they cover?

A. Yes. I have got them here. That is all I have here.

Mr. Ryan: That is all, Your Honor.

Redirect Examination

By Mr. Long:

Q. Mr. Larson, when did you sign Articles for this voyage?

A. Oh, I couldn't remember what time I signed Articles. The day before we left.

Q. The certified copy of the Articles in evidence indicates May 15th; does that correspond with your best recollection?

(Testimony of Erwin P. Larson.)

A. I think that is the day we signed on, yes.

Q. Were you on any watches set prior to that date on this ship?

A. Why, no; we didn't have any watches.

Q. Are you on ship's pay prior to that date?—
I mean in a sea sense?

Mr. Summers: I object to that as argumentative.

Mr. Long: I want to explain the difference, if Your Honor please.

The Court: The objection is overruled.

The Witness: I couldn't remember that. [2256]

The Court: He says he doesn't remember.

Mr. Long: Very well.

Q. (By Mr. Long) Now, when you and Capt. Healy took the azimuths off West Point did you take one on a North heading?

A. Yes; we took one on a North heading.

Q. On what heading, right or left of North?

Mr. Summers: That is not proper redirect examination, Your Honor. The cross examination did not go into that.

Mr. Long: I have just one question.

The Court: There was something about a quarter of a compass involved.

Mr. Ryan: No, Your Honor, not a word about the swinging of the ship down there. I didn't ask him about that at all.

The Court: There was something about a quarter of a compass being involved.

(Testimony of Erwin P. Larson.)

Mr. Ryan: That was on the direct examination, Your Honor, and not on the cross examination; not a word about that.

The Court: All right.

Mr. Long: He asked him about the north azimuth, and I want to clear the record and show they were taken. It will take just one question.

The Court: No; unless there was some question—do you wish the privilege of recalling him?

Mr. Long: Just for the one question?

The Court: Yes.

Q. (By Mr. Long) You took an azimuth on the North heading, you say? [2257]

A. Yes.

Q. Did you take one?

Mr. Ryan: We object to that as leading.

Q. On what heading immediately to the right and left of North did you take azimuths?

A. After we took the North we took North by East.

Q. On the other side?

A. North by East is the next one.

Q. When you take a heading on the other side of North it North by East?

A. Yes; before we get to North.

Q. What was that heading?

A. North by West.

Q. Were those entered in the azimuth book?

A. Yes.

Mr. Ryan: That is objected to, Your Honor.

(Testimony of Erwin P. Larson.)

Q. Where were they entered?

A. In the deviation book.

Mr. Ryan: I move to strike that answer.

The Court: Yes, it may be stricken.

Q. Where were they entered?

The Court: If anywhere.

Mr. Long: Yes.

The Witness: In the deviation book.

Q. (By Mr. Long) In the deviation book is the same as referred to as the azimuth book?

A. Yes.

Q. Is that the same term?

A. The same book, yes, sir.

Mr. Long: That is all. [2258]

The Court: You may inquire on further cross examination as to this subject matter.

Mr. Ryan: No questions.

The Court: Very well. You are excused from the witness stand. Call your next witness.

(Witness excused.)

JAMES B. LAWTON,

called as witness on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. Long:

Q. State your full name, Mr. Lawton, and speak clearly and distinctly as you can.

A. James B. Lawton.

Q. Are you married?

A. Yes, sir.

Q. Where do you live?

A. 507 First Avenue North, Seattle.

Q. What is your business or profession?

A. Seafarer.

Q. Do you hold any license issued by the Department of Commerce, United States Steamboat Inspection Service?

A. Yes, sir; Third Mate, any ocean, any tonnage.

Q. Is that commonly referred to as Third Mate, unlimited?

A. Third mate, unlimited.

Q. Have you your license with you?

A. Yes, I have (showing).

Mr. Long: I ask the privilege of having that entered [2259] in the record.

Mr. Ryan: No objection to having it copied in the record.

Mr. Long: The same as we have before. I would like to have it copied into the record and returned to the witness.

(Testimony of James B. Lawton.)

The Court: That may be done. The reporter will copy it into the record at this point.

(First page)

“C. Form 871	File No. L 16618
Serial Number	Issue Number
56565	1, 1

United States Department of Commerce
 Steamboat Inspection Service
 License to Mate of Ocean or Coastwise
 Steam and Motor Vessels:

This is to certify that James B. Lawton having given satisfactory evidence to the undersigned United States Local Inspectors, Steamboat Inspection Service, for the district of Seattle, Wash., that he is a skilful navigator and can be intrusted to perform the duties of Third Mate on Steam and Motor Vessels of any gross tons, upon the waters of any Ocean is hereby licensed to act as such Third Mate on Steam and Motor Vessels for the term of five years from this date. Given under our hands this 14th day of October, 1934.

WILLIAM M. CAMPBELL,
 Acting U. S. Local Inspector
 of Boilers.

DANIEL B. HUTCHINGS,
 Acting U. S. Local Inspector
 of Hulls.

O Ford 1108 [2260]

(Testimony of James B. Lawton.)

(Second page)

Signature of holder of license James B. Lawton.

Date of birth Jan. 2, 1907.

Place of birth Blue Canyon, Wash.

Native

Date of Naturalization

Place of Naturalization

By what Court

Naturalization Certificate No.

Present address Studio Apts., Seattle.

Passed visual examination Yes, Dec. 7, 1934.

Visual examination on file in the office of Seattle, Wash.

DANIEL B. HUTCHINGS,
WILLIAM M. CAMPBELL,
(Acting U. S. Local Inspectors issuing
this license.)

Passed examination for color blindness at Seattle, Washington, Dec. 7, 1934.

DANIEL B. HUTCHINGS,
WILLIAM M. CAMPBELL,
Acting Local Inspector."

Q. (By Mr. Long) On May 13th, 1935, what license did you hold?

A. Third mate, unlimited.

Q. How many years had you been going to sea prior to that time?

A. About 12 or 13 years.

(Testimony of James B. Lawton.)

Q. In what service, or in what trade?

A. The biggest part of it was on the Alaska run, Southeastern and Southwestern Alaska.

Q. By whom were you assigned to the steamer "Denali"?

A. I was assigned to the "Denali" by Mr. Tracy. [2261]

Q. Had you ever sailed before with Capt. Healy?

A. Yes, sir, I had.

Q. And Mr. Larson?

A. Yes.

Q. And Mr. Cleasby?

A. Yes.

Q. And Capt. Obert?

A. Yes, sir.

Q. What date did you join the "Denali", and where?

A. I joined her May 13th, 1935, at the West Seattle yard.

Q. Had you been aboard the ship on the previous date, immediately prior to that time?

A. Oh, during the month I probably had been aboard her several times.

Q. Were you employed in the yard at West Seattle?

A. Yes, I was.

Q. During the winter of 1934 and the spring of 1935?

A. Yes, sir.

Q. After joining the ship—would you tell what time you joined her, approximately?

(Testimony of James B. Lawton.)

A. Oh, I will say between 6:00 and 6:30 in the morning of May 13th.

Q. What did you do; what duties did you have that morning before the ship left West Seattle?

A. As soon as I got straightened around in the ship I went up on the bridge and checked over the gear that we needed for immediate use.

Q. What did that consist of?

A. It consisted of the harbor charts, parallel rulers, dividers, log book and pencils. [2262]

Q. Who else was present in the pilot house at that time, or approximately that time?

A. The chief mate and the second mate.

Q. Where was Capt. Healy, if you know?

A. I don't know.

Q. When did Capt. Healy join the ship, at what time?

A. He came aboard the same morning sometime. I don't know just when.

Q. What did you do from there on until about the time the ship left West Seattle?

A. I assisted the mate and the second mate. We checked the steam whistle, the telegraph to the engine room, the steering gear, and the speaking tubes to different parts of the ship.

Q. How did you find those instruments, that part of the ship's equipment?

A. All equipment was in good order.

Q. Did you check any other equipment while at West Seattle that morning?

(Testimony of James B. Lawton.)

A. Well, that morning we moved in about half an hour later. I didn't check any more.

Q. Very well. What time did you move?

A. We moved around 7:30 in the morning, the same morning.

Q. Where did you go?

A. We went to the Arden Salt Dock.

Q. Were you on the bridge at that time?

A. Yes, sir.

Q. Who else was on the bridge?

A. The captain.

Q. What course was laid out, or what kind of a course was [2263] laid out to the Arden Salt Dock?

A. The captain laid off a magnetic course from West Seattle over to the Arden Salt Dock.

Q. Do you know whether the vessel made that course?

A. Sir?

Q. Did the vessel make that course?

A. Yes; she made that course good.

Q. Do you recall how long you laid at the Arden Salt Dock that day, approximately?

A. Well, I would say around six hours.

Q. What did you during that period, do you remember, with reference to any duties in the pilot house or elsewhere on the ship?

A. I started checking the navigation instruments.

Q. With whom?

A. With the second mate.

(Testimony of James B. Lawton.)

Q. Mr. Larson?

A. Yes, sir.

Q. What did you check, just briefly—not in great detail, but just generally what was done?

A. We checked everything pertaining to the navigation, such as the bearing board, the rulers, the dividers, the pelorus, the azimuth mirror, pilot books, which consisted of Canadian Pilots and American Coast Pilot books, Canadian and American tide tables, Canadian and American Light Lists, Canadian and American azimuth tables, the log-lines, of which we had three, three complete log-lines, and the searchlight—we checked that—we checked the lights in the binnacles——

Q. (Interposing) The binnacles of what? [2264]

A. Of the compass.

Q. Did you look at the compasses?

A. Yes, I did.

Q. Did you make any cursory examination or otherwise as to their physical condition?

A. Yes, I did. They worked freely and had good clean compass cards, no bubbles in them. They looked that way to me.

Q. Did you make any check of the running lights of the ship?

A. Yes; I did. I checked them.

Q. When you refer to the running lights you mean what?

A. I mean the port light, the red light; the green light, or starboard light; the masthead light and the range light, which is on the after mast.

(Testimony of James B. Lawton.)

Q. Did you assist the second officer in checking the charts?

A. Yes, sir, we checked all of the charts.

Q. From what source did you check? How did you check them? I do not mean the details of it?

A. Oh, we had the Canadian and the American catalogues.

Q. What kind of catalogues?

A. Chart catalogues. We went through the numbers, and the second mate checked them off the catalogue as we went through them. [2265]

Q. Generally speaking, Mr. Lawton, what charts did you have on board at the time that this check was made—what area did they cover?

Mr. Ryan: I object to that as ambiguous and an unintelligible question. If he wants to know what charts they had, he can ask him for them. There is a definite way that he has to identify the charts.

The Court: Objection overruled.

Mr. Long: Read the question.

(Question read as follows:

“Generally speaking, Mr. Lawton, what charts did you have on board at the time that this check was made—what area did they cover?”)

A. We had a complete set of charts for Puget Sound and British Columbia waters, and Southwestern Alaska, Southeastern Alaska, Bering Sea, Bristol Bay. A complete set of charts.

(Testimony of James B. Lawton.)

Q. Do you remember the numbers of all of those charts?

A. No, I don't remember the numbers.

Q. Now, did the second officer and yourself make up any list of new charts that you put in a requisition for?

A. Yes. We had a list of them.

Q. And were those charts received aboard the ship to your knowledge?

A. Yes, sir.

Q. Were there any deviation cards posted in the pilot house, or where were they posted with reference to the bridge?

A. There were deviation cards posted in the chart room.

Q. Do you remember the date of them? [2266]

A. I cannot remember the date, but it was in 1933.

Q. What is that?

The Court: He said that he could not remember the date, but it was in 1933.

Q. (By Mr. Long) Were you on the vessel, Mr. Lawton, at any time while she was moving about the harbor here before sailing from Pier 2?

A. Yes. I was on several moves.

Mr. Ryan: I am sorry, but I didn't hear the answer.

The Court: Read the answer.

(Answer read)

(Testimony of James B. Lawton.)

The Court: Mr. Lawton, please keep your voice raised, and talk distinctly and clearly so that counsel at the counsel table can hear you, and the Court can hear you.

Q. (By Mr. Long) With what superior officer were you on during those moves?

A. With Captain Healy, the master.

Q. Now, during those moves that you were with Captain Healy did you observe Captain Healy take any bearings or laying any courses or making any——

Mr. Ryan: (Interposing) I object to that on the ground that it is leading. Ask him what he observed.

Mr. Long: He may have observed a thousand things, and I am trying to direct his attention to this particular phase of it.

The Court: Objection overruled.

Mr. Long: Read the question, please. [2267]

(Question read as follows:

“Now, during those moves that you were with Captain Healy did you observe Captain Healy take any bearings or laying any courses or making any——”)

Q. (Continuing) Or making any checks of his compasses on the “Denali”?

A. Yes, I saw him several times while I was up there.

Q. While you were in the wheel house, and during these moves, could you tell us whether or not the vessel made her courses as they were laid?

(Testimony of James B. Lawton.)

A. Yes, sir. The captain remarked that she made her courses good.

Mr. Ryan: I move to strike out what the captain remarked.

The Court: Yes.

Mr. Long: I think that this is a part of the course of business. He was aiding the captain—

Mr. Ryan: (Interposing) This is hearsay.

Mr. Long: (Continuing) —in the navigation of the ship. I think it is competent, for whatever the Court thinks it is worth, of course.

The Court: I believe it should be stricken, and it is so ordered.

Mr. Long: Very well.

Q. (By Mr. Long) During the time that you were on the bridge, during the moves in Seattle, did you discover any defects in either the standard or steering compass?

A. No, I did not.

Q. Did you observe any unusual deviations?

A. No. [2268]

Q. How did the steering gear perform during these moves?

A. Sir?

Q. How did the steering gear perform during these moves?

A. The steering gear was in good order all the time.

Q. During these moves was the vessel backed or reversed on any occasions?

(Testimony of James B. Lawton.)

A. Yes, on lots of occasions.

The Court: Try to avoid leading the witness, Mr. Long.

Mr. Long: I will, Your Honor. I am trying to hurry along.

The Court: Ask him what they did.

Q. (By Mr. Long) Now, where were you, Mr. Lawton, when the vessel sailed on May 16th?

A. When she actually sailed?

Q. Yes.

A. I was standing by the after lines, in charge of them.

Q. After she had cleared the dock, what did you do?

A. I stepped back aft, where I was supposed to go, until the ship was turned around and headed on her course.

Q. Then where did you go?

A. The second mate relieved me and I went below.

Q. Did you at any time during that morning perform any duties on the bridge?

A. Yes.

Q. I am referring to the morning of May 16th.

A. Yes, I did.

Q. Where did the vessel—did the vessel stop at any place in the harbor or outside of the harbor?

A. The vessel stopped off of West Point. [2269]

Q. Now tell us just what you did during that period.

(Testimony of James B. Lawton.)

A. Why, the captain was going to swing ship for azimuths, and I asked him what he wanted me to do. He said, "You stand down in the pilot house by the telegraph", and that is just what I did.

Q. Who was in the pilot house with you?

A. There was a man at the wheel.

Q. The helmsman at the wheel?

A. Yes, sir.

Q. Where was Captain Healy?

A. Captain Healy was on the top deck.

Q. Anybody with him?

A. Yes, the second mate was with him.

Q. Just tell us what occurred.

A. Well, I was up there for about an hour. They swung the ship for about half of the compass, and he used quite a few different bells to the engine room, to go ahead, stop, and so forth.

Q. And do you recall, Mr. Lawton, approximately what time this was?

A. Oh, it was between 7:00 and 8:00 A. M.

Q. Well, now, what were your duties? What signals did you give? Just tell us what you personally did in connection with that. You say that you handled the telegraph?

A. Yes, sir.

Q. What do you mean by that?

A. Well, the captain or the second mate would holler down the speaking tube to slow ahead, and I would put it on the pilot house telegraph, to slow ahead. They would [2270] answer from the

(Testimony of James B. Lawton.)

engine room, indicating that the ship was going slow ahead.

Q. I see.

A. And maybe it would be stop next.

Q. Do you know on what courses, generally, or on what points the azimuths were taken?

A. Yes. The azimuths were taken from West Southwest.

Mr. Ryan: Well, the witness testified that he didn't take them, and that he was not in the place where they were taken, and so I object to this as calling for speculation and conjecture.

Mr. Long: I will lay the foundation for that.

Q. (By Mr. Long) Mr. Lawton, when you were on the watch with Captain Obert did you have occasion to see the deviation book?

A. Yes, sir, I did.

Q. Did you see the calculations and deviations obtained during the swinging at West Point?

A. Yes, I certainly did.

Q. And approximately over what area or over what part of the compass did those deviations cover?

A. The ones taken at West Point covered from West Southwest around to the Northeast.

Q. And how often on that trip did you see that book?

A. Every time that I went on watch.

Q. Did you take any azimuths yourself on this trip?

(Testimony of James B. Lawton.)

A. Yes, I did.

Q. What was the practice relative to taking azimuths on this trip?

A. The practice? [2271]

Q. Yes.

A. It was the captain's standing orders to take azimuths on every course, if possible.

Q. Now, at the time that the ship was swung off West Point, was a powder boat in the immediate vicinity?

Mr. Ryan: That is objected to as leading.

Mr. Long: It is leading, but I don't know how else to ask him.

The Court: Try to avoid leading questions.

Q. (By Mr. Long) What other boat was around there, Mr. Lawton, if you know?

A. There was a powder boat.

Q. Where was it?

A. It was about abreast of No. 2 hatch.

Q. How big a boat was it?

A. It was a very small boat. I cannot say.

Q. Was it steel or wood?

A. A wooden ship.

Q. Did any of the top hamper or running gear get up as far as the bridge? Just tell us what you saw.

A. The ship was up very low in the water. I don't know just how high. I am sure that it didn't come up to the bridge. In fact, I don't think that it came up to the top of the deck.

(Testimony of James B. Lawton.)

Q. Now, after you finished your duties in the pilot house where did you go?

A. I went down to assist the chief mate in stowing the dynamite.

Q. Did you see the ships then—did you see powder boats, or this powder boat then? [2272]

A. Yes, I did, but my duties took me inside of the shelter deck most of the time from then on.

Q. How big was this powder boat; can you give us an idea?

A. The length?

Q. Yes.

A. Fifty or sixty feet; no more than that, I don't think.

Q. Now, at the time that you had finished—or at the time—strike that. At the time that the master and the second officer had finished taking azimuths, had the second powder boat arrived, or was it alongside, or just tell us when the change was made, if you recall?

A. Well, I don't recall that. The second powder boat arrived a little later after they got through with the azimuths.

Q. Now, Mr. Lawton, what watch did you as third officer of the "Denali" stand?

A. My watch was from 12:00 midnight to 6:00 A. M. in the morning, and from 4:00 A. M. until—and from 4:00 P. M. in the afternoon until 6:00 P. M.

Q. And how many hours out of each twenty-four were you on duty?

(Testimony of James B. Lawton.)

A. I was on duty eight hours a day.

Q. And with what senior officer—with what senior watch officer did you stand your watch?

A. Captain Obert, the pilot.

Q. What were the second mate's hours of duty—what watch did he stand?

A. The second mate stood from 6:00 A. M. in the morning until 8:00 A. M., and from 6:00 at night to midnight. [2273]

Q. How many hours a day did he stand watch?

A. He stood eight hours, the same as myself.

Q. Now, Mr. Lawton, during the voyage of the "Denali", on the afternoon of the 16th—on the afternoon and evening what time did you first come on on that day—on the 16th?

A. On the 16th?

Q. Yes.

A. Oh, I imagine I came up on the bridge around 3:00 o'clock.

Q. And what time did you go on duty?

A. I went on duty at 4:00 o'clock.

Q. What did you do between 3:00 and 4:00 o'clock?

A. I came up on the bridge to see if I could get an azimuth and checking some stuff around the ship.

Q. And during the voyage on the 16th, 17th and 18th, while you were on watch, how did the ship make her courses?

(Testimony of James B. Lawton.)

A. She made all of her courses very good.

Q. Were her courses laid on the chart magnetic?

A. Yes, sir.

Q. Did you take any bearing on the ship to fix off various points or lights?

A. We took quite a few bearings, whenever we could—whenever we could get one.

Q. What did they indicate, if anything, as to whether the vessel was making her courses good?

Mr. Ryan: That is objected to unless it is shown what bearings the witness took. He said that he took whatever he could. It is not shown that he qualified to give any inference that he could take any bearings. [2274]

The Court: Both objections together are sustained. However, if counsel desires, he can inquire further as to any specific bearings which this witness took.

Mr. Long: I will have to use this log book for that purpose. Do you want me to go into that now, Your Honor, at this time?

The Court: No. Do that next week. The proceedings in this case are adjourned until next Tuesday, November 9th, at ten o'clock in the forenoon.

(Whereupon an adjournment was taken at 4:27 o'clock P. M., November 5, 1937, to 10:00 o'clock A. M., November 9, 1937.) [2275]

(Testimony of James B. Lawton.)

November 9, 1937,
10:25 o'clock A. M.

Court convened pursuant to adjournment;
All parties present.

The Court: Are there any other *ex parte* matters or matters upon agreement to come before the Court? If not, you may proceed with the case on trial.

Mr. Long: Mr. Lawton, take the stand.

The Court: You may resume the stand, Mr. Lawton.

JAMES B. LAWTON,

resumed the stand for further examination.

Further Direct Examination

By Mr. Long:

Q. Mr. Lawton, on the evening of May 18th what time did you go up on the bridge?

A. I went up on the bridge about fifteen minutes to twelve.

Q. At what time that evening were you supposed to go on duty?

A. Midnight—12:00 o'clock.

Q. When you arrived on the bridge who was present?

A. The second mate and the captain.

Q. That is Mr. Larson, the second mate, and Captain Healy?

A. Yes, sir.

(Testimony of James B. Lawton.)

Q. When did Pilot Obert come on watch—come onto the bridge? [2276]

A. Captain Obert came on the bridge approximately the same time that I did.

Q. Now, just tell us what occurred while you were changing watch there, please,—what you did.

A. About a quarter to twelve I had a short conversation with the second mate. He pointed out a light on our starboard beam, which he told me was Triple Island Light; that she would be abeam shortly after midnight, and that he had taken a four point bearing at the time of the log and noted it in the log book, and he took me over and showed me in the log book just exactly what he had done—how he had entered it.

Then I went into the chart room, looked over the charts and the waters that we were going through on our coming watch; looked at the characteristics of the different lights; noted the highlands and high points on Dundas Island; reefs and rocks, Prince Lebo Island, and all dangerous navigation.

Q. Now, was there any course laid down on any chart in the chart room, Mr. Lawton?

A. Yes. There was a chart laid down.

Q. You mean a course laid down? You said, “a chart laid down”.

A. Yes, sir. There was a course laid down.

Q. Now, how many charts, do you recall, were on the chart table covering these waters when you came on watch?

(Testimony of James B. Lawton.)

A. Well, there were several.

Q. Showing you Claimants' Exhibit A-10, I will ask you if this chart was on the chart table at the time?

Mr. Ryan: I object to that as leading, and may I [2277] ask that counsel be directed not to lead the witness during this examination? The witness' recollection as to what charts were there and what they show has not yet been exhausted, and here he has been led to a particular chart.

The Court: As applied to this question the objection is overruled.

Mr. Long: Read the question.

(Question read as follows:

“Showing you Claimants' Exhibit A-10, I will ask you if this chart was on the chart table at the time?”)

A. Yes, I recognize this chart as being one on the table at that time.

Q. What other chart was there, if you recall?

A. There was a large scale chart of Caamano Passage.

Q. Do you know the number of that chart?

A. Yes, I do know the number of it.

Q. What was it? What is the number of it?

A. The number of it is 2828.

Q. Showing you Petitioner's Exhibit 33, I wish you would examine that and tell me what that chart is, if you know, and whether or not you saw it that night (handing chart to witness)?

(Testimony of James B. Lawton.)

A. Well, this is a large scale chart of the particular waters that we were in.

Q. Do you recall the course that the vessel was on at the time that you came on watch at 12:00 o'clock?

A. Yes, I do.

Q. What was that course, by standard compass?

A. By standard compass—the standard compass course was [2278] Northwest $\frac{1}{4}$ North.

Q. Now, were there any—I will strike that. What course lines, if any, were laid down on Chart 2828 when you came on watch?

A. There was a magnetic course laid right through the middle of Caamano Passage.

Q. Do you recall what that course was?

The Court: May I interrupt you there, Mr. Long?

Mr. Long: Yes, Your Honor.

The Court: Are you asking that question with respect to the identical chart which he now holds in his hand, or with respect to some other chart?

Mr. Long: With respect to Chart 2828, which he testified was in the chart room at that time.

What was the question again? Read the question, Mr. Reporter.

(Answer and question read as follows:

“A. There was a magnetic course laid right through the middle of Caamano Passage.

Q. Do you recall what that course was?”)

A. Yes, sir. The course was North by West $\frac{1}{8}$ West.

(Testimony of James B. Lawton.)

Q. By which chart—I will strike that. Mr. Bogle has called my attention to one thing that should be cleared up. Mr. Lawton, in showing you Petitioner's Exhibit 33, I will ask you if this particular chart was on board the "Denali", or a copy of it, or a chart just like that, just so that the record will be clear?

A. No. This particular chart was not on board, but one identical to this. [2279]

Q. Now, at 12:00 o'clock midnight what was done, Mr. Lawton, with reference to the navigation of the ship?

A. At 12:00 o'clock midnight the watch at the wheel was relieved. The man coming up to the wheel brought the reading of the log along with him.

Q. And what was done with it? Just tell us.

A. The second mate took the time, compared the courses on both compasses, and entered the log in the ship's log book.

Q. Now, when you speak of "the log", what do you mean? What do you mean—what log?

A. I mean the pilot house log book.

Q. You spoke of reading the log. What do you mean? You said about the man bringing the reading of the log along with him—bringing it up. You said the man coming up to the wheel brought the reading of the log along with him. Now, what log did you mean?

A. The log at the stern of the ship.

Q. The patent log or the taffrail log?

(Testimony of James B. Lawton.)

A. Yes, sir; the taffrail log.

Q. What time then did you actually go on duty, Mr. Lawton?

A. At midnight.

Q. Now, when did the second officer and Captain Healy leave the bridge—approximately?

A. The captain left the bridge shortly before midnight, and the second mate shortly after midnight.

Q. Now, did you take any bearings after coming on watch yourself?

A. At 12:00 o'clock I had the bearing board and was standing by the window, on the starboard side, waiting to [2280] take a bearing on Triple Island Light when it was abeam of the ship.

Q. And did you take that bearing?

A. Yes, I did.

Q. At what time?

A. I took the bearing at 12:06, when the light was in line with the two sights on the bearing board, and the ship was right on her course.

Q. Was the log read at that time? When I say, "was the log read", I mean the taffrail log or the patent log.

A. About a half a minute to a minute before the light was actually abeam I blew the whistle—my pocket whistle—two times. I blew it two times, indicating that the man on watch should read the log.

Q. And then what happened?

(Testimony of James B. Lawton.)

A. And approximately half a minute later the light was abeam. I noted the time; told the pilot that the light was abeam. And when the man brought the log up—the reading of the log, I figured the difference between that reading and the reading when the Triple Island Light was on the four points.

Q. What was that distance, do you recall?

A. Yes. The distance was ten and a half miles, which I told the pilot.

Q. And what did that calculation give you with respect to the position of the vessel?

A. It told us by the log that we were ten and a half miles off of Triple Island Light.

Q. All right. Now, after you had fixed your approximate position off Triple Island Light by that method, was [2281] there any change of the course made, or just tell us what the pilot did, or what you did.

A. The pilot gave the man at the wheel—the helmsman—orders to swing the ship to the right or eastward.

Q. And on what course? What course did he give you?

A. He didn't give me any course.

Q. Just tell us what happened there while the ship was being changed.

A. The pilot said to me, "Go up on top and put the ship——"

(Testimony of James B. Lawton.)

Q. (Interposing) What do you mean, "up on top"?

A. I mean on the deck, right above the pilot house, where the standard compass is.

Q. All right.

A. To go up there and put the ship on North $\frac{3}{4}$ West by the standard compass.

Q. Now, just tell us how you did that.

A. Well, the standard compass is right over the compass down in the wheel house, and between the two compasses is a brass speaking tube which we use to give orders to the man at the wheel, or which the man at the wheel can use to speak up to us. The ship at that time was swinging nicely to the right. When she had one point to go to the course that I wanted on the standard compass I sung out to the man at the wheel that he had one point to go from where he was actually at then. When she was half a point away from the course, and she still had half a point to come up to her new course, I sung out, "Half a point more to go before you are on your course".

Q. Did you receive any reply?

A. Yes. The man at the wheel repeated each time that I sung [2282] out to him.

Q. All right.

A. And when we had a quarter of a point to go I sung out once more. By that time he had eased the ship's head up so that she was swinging very slowly coming up to her course.

(Testimony of James B. Lawton.)

Q. All right. Did he set her on the course?

A. When she got right set on North $\frac{3}{4}$ West on top I took out my whistle and I tapped on the speaking tube, which can be heard very distinctly in the wheel house. I kept tapping on the tube, indicating that on the standard compass I had her right North $\frac{3}{4}$ West—on the standard compass.

Q. I see. Is that the customary manner and practice of setting a vessel on a course?

A. That is the customary manner on all American ships.

Q. All right. What did you do before you came down then from the standard compass?

A. After that, well, I stepped away from the compass for a few minutes— a few moments—and I looked over on the starboard side and noted that Triple Island Light had went forward of the beam again about three points.

Q. And what did that indicate?

A. It indicated that we were around on our new course. She was good and steady then.

The Court: Kindly read that answer again, Mr. Reporter.

(Answer read)

A. So I looked back into the standard compass again and she was perfectly steady on North $\frac{3}{4}$ West. I rapped and kept [2283] rapping as long as she set right steady on that course. I stepped away from the compass again for a minute to give the

(Testimony of James B. Lawton.)

ship a chance to settle down good to her new course and——

Q. (Interposing) Then what did you do?

A. Then I looked in the compass again—the standard compass—and when she was steady on North $\frac{3}{4}$ West I again rapped on the speaking tube for a few minutes, indicating to them down below that she was right steady on North $\frac{3}{4}$ West on the standard compass.

Q. All right. Then what did you do after you steadied her on that course?

A. I went down to the pilot house then and told the pilot—I said to the pilot, “She is right on North $\frac{3}{4}$ West, sir”, and he said, “All right”. He said, “Do the same on this compass and mark both——”

Q. (Interposing) What do you mean by “this compass”?

A. The compass in the wheel house.

Q. Go ahead.

A. And he said, “Mark the both courses down in the log”, which I did.

Q. So that when your standard new course was marked North $\frac{3}{4}$ West what was the reading of the steering compass?

A. The reading of the steering compass was also North $\frac{3}{4}$ West.

Q. Now, did the vessel continue on that course, and if so, for how long before you did anything else in connection with her navigation?

(Testimony of James B. Lawton.)

A. The ship continued on that same course until one o'clock. Triple Island Light then came abeam on this new course. [2284]

Q. And what did you do at that time?

A. I took a beam bearing on the light, the same as I had previously done at 12:06. I blew the whistle for the man to read the log, and went up on top and compared the compasses again.

Q. What course was the ship on at that time by standard compass?

A. She was on North $\frac{3}{4}$ West, the same as the other course.

Q. Now, when you were up reading—or comparing the compass—comparing the steering compass after the light came abeam the second time on the new course, did you observe any land, and if so, what?

A. When I was up checking—comparing the courses——

Q. (Interposing) Just finish your answer.

A. I picked up the high lands of Dundas Island on the starboard bow. [2285]

Q. And you say that was about 1:00 o'clock?

A. Yes, about one.

Q. What did you do after that?

A. I went down below and told the pilot that I saw that land.

Q. Did you see any other land shortly thereafter?

(Testimony of James B. Lawton.)

A. Yes, I did, at 1:30 we picked up Zayas Island.

Q. How did Zayas Island bear at 1:30?

A. She bore ahead, with most of the island on the port bow.

Q. What course were you on at that time, by standard compass and steering compass?

A. We were on North $\frac{3}{4}$ West.

Q. What did the pilot do at 1:30, when you observed Zayas Island?

A. Well, Zayas Island was too much ahead, so the pilot hauled the ship one-eighth of a point to the right, to put Zayas Island——

Mr. Ryan: (Interposing) May I make an objection to that question, in view of the way the answer is beginning. I object to it on the ground that this is evidently an attempt by the Petitioner to prove that the entries in its official deck log book are false. That log book is required by statute of Congress to be kept for the protection of the cargo and the passengers on a ship. The shipowner is bound by the entries that are made in the log book of the ship, and is not at liberty after entries have been made, and at a late stage of litigation, to come in and try to prove that those entries are false.

So I object on the ground that the entries made in the official deck log book of this ship are admissions [2286] which are binding and conclusive on the petitioning ship owner, and that the Court should not entertain oral evidence of this sort by a man who apparently made those entries, to take the

(Testimony of James B. Lawton.)

position that they are false, for the purpose of injuring the owners of the cargo on the ship.

The Court: The objection is overruled.

Mr. Ryan: Exception.

The Court: Exception allowed.

Mr. Pellegrini: I move that the testimony given so far by the witness with respect to changing courses, entries of which are not in the log book, be stricken.

The Court: The motion is denied.

Mr. Ryan: We join in that motion.

The Court: Yes; all Claimants join in the motion, as I understand it, and the motion is denied. Exception allowed.

Q. (By Mr. Long) Read the question. (Last question read as follows:

“Q. What did the pilot do at 1:30, when you observed Zayas Island?”

A. Well, Zayas Island was too much ahead, so the pilot hauled the ship one-eighth of a point to the right, to put Zayas Island——”)

Just go ahead.

A. To put Zayas Island wider on the port bow of the ship.

Q. Just tell us what happened.

The Court: Pardon me; will you inquire of this witness what he means by that term, putting the island wider on his port bow. [2287]

Mr. Long: Yes; I will do that.

(Testimony of James B. Lawton.)

Q. (By Mr. Long) What do you mean, Mr. Lawton, when you refer to putting the island wider on your port bow?

A. I mean when we picked up the island it was bearing mostly ahead of the ship, and we hauled the ship's head to the right, which put the island more to the left.

The Court: You mean at a greater distance off?

The Witness: Yes, sir.

Mr. Long: I think we can illustrate that with a pencil, possibly.

Q. (By Mr. Long) Would you show the Court what you mean, using my pencil here, and this chart, what you mean by wider on the port bow?

A. When we picked up Zayas Island it was like this (illustrating), too much ahead of the ship, so the pilot hauled the ship to the right, or eastward, this way, to set Zayas Island more over on the port side of the ship.

Q. All right. Now, just tell us how long you ran on that heading, approximately.

A. We ran on that heading approximately ten minutes.

Mr. Ryan: May it be understood that the objection that I made on various grounds shall stand to all this line of testimony, and that there may be an exception noted to the adverse rulings?

Mr. Long: That is all right.

The Court: Yes.

Mr. Long: That will save time, Your Honor.

(Testimony of James B. Lawton.)

Q. (By Mr. Long) Go ahead, Mr. Lawton.

A. We ran on that heading for about ten minutes. [2288]

Q. Tell us what occurred; what did you observe?

A. We again observed Zayas Island to be too much right ahead of the ship.

Q. What did that indicate to you, if anything, as to the action of the vessel?

A. It indicated very clearly that the ship was being set to the westward by the current.

Q. How long did you run on that second heading, after you changed the second time one-eighth to the right, approximately?

The Court: I do not recall clearly his so stating, as to his second change.

Mr. Ryan: He has not, Your Honor, and I object to it as wholly leading, and in view of my repeated objections to the leading examination of counsel I ask that he be directed to not repeat such leading questions.

Q. (By Mr. Long) Just tell us what was done. Tell us in your own words what was done after that, Mr. Lawton; what you could see and what was done.

A. Well, after we changed twice one-eighth of a point to the right and continued for another ten minutes, Zayas Island again appeared to be right ahead of the ship.

Q. What was done then?

A. The pilot hauled her one-fourth of a point to the right then, putting Zayas Island more over on our port bow, where we wanted it.

(Testimony of James B. Lawton.)

Q. What was the pilot endeavoring to do by those changes to the right?

Mr. Ryan: Objected to on the ground that it calls for speculation. [2289]

Q. Did you know what he was trying to do?

A. Why, certainly.

Q. All right; tell us what he was endeavoring to do by those changes to the right.

A. He was trying to maneuver the ship by looking at Zayas Island, to get in the middle of Caamano Passage.

Q. Tell us what happened after that.

A. We ran that course for about another ten minutes, and Zayas Island started bearing ahead again instead of getting wider on the port bow.

Q. Indicating to you what was occurring?

A. Indicating that we were being set sideways.

Q. Which direction?

A. To the westward.

Q. From what cause?

A. By the current.

Q. About what time was that when this last change of a one-fourth of a point to the right was made, if you recall?

A. It was about ten minutes to 2:00. About 2:00 o'clock, approximately 2:00 o'clock, the pilot hauled the ship another one-fourth of a point to the right, which put Zayas Island—brought her on the port bow where he wanted it.

(Testimony of James B. Lawton.)

Q. Up until that time, Mr. Lawton, how many changes to the right had the pilot made, from 1:30 or thereabouts?

A. He had made four changes to the right.

Q. At 2:00 o'clock do you know what the vessel's heading was?

A. Yes. At 2:00 o'clock I compared compasses.

Q. Who compared the compasses? [2290]

A. I did.

Q. Very well. What was the ship's heading by standard compass?

A. She was heading on the standard, north, and on the steering compass north, also.

Q. In other words, the two compasses were the same on that heading?

A. Yes; they were the same.

Q. How long did you steer this heading of North?

A. Well, approximately 20 minutes.

Q. Tell us what occurred then?

A. Well, around 2:20 or 2:25 Zayas Island, instead of getting wider on our bow, had pulled ahead again.

Q. Let me interrupt you. When you compared the courses and observed the vessel was on North, did you have any conversation with Capt. Obert relative to the entry of that change in the log book?

Mr. Ryan: May I have the answer to the last question read? (Answer read.)

(Testimony of James B. Lawton.)

Q. Did you have any conversation with Capt. Obert relative to the entry of those changes in the log book?

A. Yes, I did.

Q. What was said? What did he say?

A. I asked the pilot if he wanted to enter those changes, and he said no.

Q. When the vessel was on North, at about 2:00 o'clock, what could you see with reference to any land?

A. Well, we could see Zayas Island and Dundas Island.

Q. What about the channel between the two islands; could you see that? [2291]

A. Yes. The channel was opening up pretty good.

Q. How did the ship appear to be heading with relation to the center of the channel between Dundas Island and Zayas Island?

A. At 2:00 o'clock?

Q. At 2:00 o'clock, yes.

A. Well, she appeared to be heading well towards the middle of the channel.

Q. You say she ran that North course about 20 or 25 minutes, and then what happened?

Mr. Ryan: Just a minute; he didn't say anything about 25 minutes. He said 20 minutes. I would like to keep the record straight.

Mr. Long: All right.

(Testimony of James B. Lawton.)

Q. How long did she run the North course? I misunderstood you?

Mr. Summers: He has already testified to that.

Mr. Ryan: He has already testified to that, and I object as repetitious.

The Court: I will let him testify to it again, because it didn't stay in my mind if he did testify, and I would like to hear it.

Q. How long did you run on this North course after 2:00 o'clock?

A. I said we ran approximately 20 minutes.

Q. Tell us what then occurred.

A. Zayas Island, instead of being wide on the port bow, which would indicate we would clear it and the reef, had brought ahead again.

Q. What happened then? [2292]

A. The pilot at that time gave the order to the man at the wheel to port his helm.

Q. Which way would that swing the ship's head?

A. That would swing the ship's head to the right, or to the eastward.

Q. Go ahead and tell us what occurred there.

A. The pilot was looking ahead at Caamano Passage, and when he had the head of the ship lined up with the middle of the Passage, from our angle of approaching it, he gave the orders to the man at the wheel to steady the ship, which he did.

Q. Mr. Lawton, at 2:20 or thereabouts, when this change to the right was made concerning which

(Testimony of James B. Lawton.)

you have just testified, did Capt. Obert give the helmsman any magnetic course to steer?

A. No; he didn't give him any course.

Q. What were his orders, again, so that I get that clear.

A. How do you mean?

Mr. Ryan: That is objected to. He has already testified to that.

The Court: I believe that is unnecessary. It seems clear.

Mr. Long: I think so, but I wanted to get it clear.

Q. (By Mr. Long) Go ahead and tell us what happened when the pilot told him to steady the ship; then what was done?

A. Well, the man at the wheel steadied the ship up.

Q. What did you do?

A. After she was steady I checked the courses.

Q. How did the ship appear to be heading at that time, [2293] after steadying up on that change, with relation to Dundas Island and Zayas Island, and the channel between the two islands? Just tell us in your own words just how she looked to you.

A. From the angle that we were approaching the channel it seemed that we were headed directly through the middle of the passage or channel.

Q. What was the visibility at that time, Mr. Lawton; what could you see?

A. Well, on the beach line on both Dundas Is-

(Testimony of James B. Lawton.)

land and Zayas Island there was the morning haze, making——

Q. (Interposing) After this change to the right had been made, then what did you do?

Mr. Ryan: I didn't get the last word of the last answer. May I have it? (Last answer repeated.)

Mr. Long: I beg your pardon; I did not hear that.

Q. (By Long) Just finish your answer.

A. Making the air sort of deceiving.

Q. Just tell us what you did, Mr. Lawton.

A. I checked the compasses.

Q. By what method? What did you do?

A. I compared the compasses by the usual method.

The Court: Mr. Long, you haven't established the time.

Mr. Long: I am just coming to that.

Q. About what time was this, Mr. Lawton, that you compared the compasses, after this change to the right?

A. Approximately 2:25.

Q. What was the heading on the standard compass at that time?

A. At that time when I compared the compasses the heading [2294] on the standard compass was North $\frac{3}{4}$ East.

Q. What was the heading on the pilot house compass at that time?

A. The same; North $\frac{3}{4}$ East.

Q. North $\frac{3}{4}$ East?

(Testimony of James B. Lawton.)

A. Yes, sir.

Q. This was about 2:25, you say?

A. Yes, sir.

Q. What occurred subsequent to 2:25? I will strike that question. Mr. Lawton, why did you check the compasses after this turn to the right?

The Court: You mean after the last mentioned turn to the right?

Mr. Long: That is correct; after the last one I have just mentioned, or haul to the right?

The Witness: I checked the compasses because I expected to enter them in the log book.

Q. Did you enter them in the log book?

A. No. I asked the pilot if I should, and he said no, that we would wait.

Q. Did he tell you what he expected to do, as to when you should make the entry, etc.?

A. Yes; he told me——

Mr. Ryan: (Interposing) That is objected to. I just protest against leading questions.

Mr. Long: Yes; it is leading.

The Court: State the objection and the Court will rule.

Mr. Long: I will put it another way.

Q. (By Mr. Long) What did the pilot say when you asked him [2295] as to whether or not you should enter this change in the log book, this last change in the log book?

A. He said no, that we would wait until we got

(Testimony of James B. Lawton.)

further up the channel, and make a notation on the side of the log book.

Q. A notation to what effect?

A. Of the strong tide, and the various courses we had steered already.

Q. What happened after 2:25, Mr. Lawton, when you compared the compasses as you have stated?

A. At 2:37, or shortly before, the pilot said to me, "Take the bearing board and take an abeam bearing on the South end of Zayas Island, and also get the log."

Q. Did you do that?

A. Yes; I did that.

Q. What was the degree of your visibility in looking at Zayas Island to take this abeam bearing? Just tell us how it looked to you.

A. Well, it wasn't clear, by any sight. I had to wait until we actually got up to the end of the island, looking out over the water in the background before I could make out the end of the island.

Q. How about the main portion of the island?

Mr. Ryan: Just a minute; I didn't hear that answer. (Answer read.)

Mr. Long: Now read my last question. (Question read.) Strike that.

Q. (By Mr. Long) What was the visibility as to the main portion of the island at that time, Mr. Lawton? Could you see it, or otherwise? [2296]

A. Zayas Island, you mean?

(Testimony of James B. Lawton.)

Q. Yes, sir.

A. Why, I could see the tops of some of the trees, and see a line of haze along the beach, along some of the trees.

Q. How about Dundas Island at about that time?

A. The south end of Dundas Island had quite a little haze along the shore line.

Q. How did the vessel appear to be heading at that time, with relation to the channel between the two islands, and by the channel I mean Caamano Passage?

A. Well, from our angle of approaching the channel she appeared right in the middle.

Q. And what was your heading at that time?

A. Our heading was North $\frac{3}{4}$ East.

Q. Did you enter that abeam bearing in the log book?

A. Yes, I did.

Q. Was the log read?

A. The log was read, yes.

The Court: What log?

Mr. Long: The patent log.

The Witness: The patent log at the stern of the ship.

Q. (By Mr. Long) Tell us what happened next, Mr. Lawton? What did you do next, or what did you see next?

A. I entered the abeam bearing on the south end of Zayas Island and went back to where I was

(Testimony of James B. Lawton.)

standing on watch and lookout. Almost immediately I picked up a light, a little on the port bow.

Q. You say a little on the port bow; about how much on the port bow, if you remember?

A. Well, a point or point and a half. [2297]

Q. Do you know what light that was?

A. Yes, I do.

Q. What light was it?

A. It was Tree Point Light.

Q. During the time from 1:30 on to this point, Mr. Lawton, did you know about this reef being off the southeasterly end of Zayas Island?

A. Yes, I did know about it.

Q. Did the pilot know about it?

A. Yes, he certainly did.

Q. After you picked up Tree Point Light what happened?

A. Well, in a couple of minutes we stranded, shortly after I picked up the light.

Q. How did the vessel hit?

A. Oh, she just seemed to slide to a stop. I would say easy, very lightly.

Q. How did the vessel appear with relation to the channel after she hit? Or at the time she hit?

A. She appeared to be right in the middle of the channel.

Q. What was her heading after that? Did you look at the compasses after she had hit?

A. Yes, I did.

Q. What was the compass reading?

(Testimony of James B. Lawton.)

A. The compass reading was North $\frac{1}{2}$ East.

Q. On which compass?

A. On both compasses.

The Court: Mr. Long, will you have the witness point out Tree Point Light now?

Mr. Long: Yes; I will do that.

Q. Would you point out to the Court on chart No. 2828 Tree [2298] Point Light?

A. Right there (indicating).

The Court: The witness has done so on Petitioner's Exhibit No. 33. You may proceed.

Q. By the way, how did Tree Point Light appear when you first saw it? Not the bearing, but the visibility of it.

A. It appeared like any other light would. You could just see a light, the flash of the light.

Q. Did you see the flare or the light itself?

A. I saw the light itself.

The Court: At this point we will take a five-minute recess.

(Recess.) [2299]

The Court: You may proceed.

Q. Mr. Lawton, approximately how long before the vessel stranded did you sight Tree Point Light?

Mr. Ryan: That is objected to. He has already testified. He said, "A couple of minutes".

The Court: Objection overruled. Somehow it did not stick in my mind, Mr. Ryan.

Mr. Long: If he answered it, I didn't hear it.

The Court: He may answer.

(Testimony of James B. Lawton.)

Q. (By Mr. Long) Just answer it.

A. Well, it was a couple of minutes.

Mr. Ryan: What was the answer?

The Court: He said that it was a couple of minutes.

Q. (By Mr. Long) Did you take the time when you sighted Tree Point Light on the ship's chronometer?

A. No, I did not.

Q. Now, from approximately 1:30 A. M. until the time of stranding what was the pilot doing?

A. The pilot was piloting the ship.

Q. By what means?

A. By his eye sight and land falls on Zayas Island.

Q. What do you mean by "land falls", Mr. Lawton?

A. Well, marks of land.

Q. From 1:30 A. M. until the time of the stranding was Zayas Island continuously visible?

Mr. Summers: That is leading.

Mr. Ryan: We object to that on the ground that it is leading.

The Court: Yes, it is.

Mr. Long: Yes, I know that it is leading. I will [2300] ask it in another way.

Q. (By Mr. Long) From 1:30 A. M. until the time of the stranding what land could you see? Just tell us that in your own words.

(Testimony of James B. Lawton.)

Mr. Summers: I object to that as leading and suggestive.

Mr. Ryan: I object to that. He did not say that he could see land all the time.

Mr. Long: Well, I will bring it out.

Mr. Ryan: I object to that. Counsel has asked leading questions time and time again, and this witness is the officer on watch on the ship—a licensed officer on the ship—and I most strenuously protest to his being led around like this by his own counsel.

The Court: The objection is overruled.

Mr. Long: Read the question.

Mr. Ryan: Exception.

The Court: Exception allowed.

(Question read as follows:

“From 1:30 A. M. until the time of the stranding what land could you see? Just tell us that in your own words”.)

A. From 1:30 until the time that the ship stranded we could see Dundas Island and Zayas Island at all times.

Q. From 1:30 until the time of stranding, Mr. Lawton, what, if any, compass or magnetic courses did the pilot give the quartermaster?

A. The pilot did not give any courses.

Q. Where was the pilot stationed during that time? Where did he stand?

A. The pilot stood on the port side of the pilot house, with [2301] his head out of the window.

(Testimony of James B. Lawton.)

Q. Was the window opened or closed?

A. Well, it was open.

Q. During that period was the pilot steering any magnetic courses?

A. No, he was not.

Q. Or were any magnetic courses give you by the pilot for entry in the book?

A. No.

Q. During that time, Mr. Lawton, from 1:30 A. M. until approximately 2:25, and even on up to the time of the stranding, what did you observe as to the action of the vessel? That is the end of my question. What did you observe?

A. Will you read that question again, please?

(Question read)

A. Why, I observed, by looking at Zayas Island, that the ship was being set to the westward.

Q. From what cause?

A. By the current.

Q. During that period did the pilot make any comment about the ship being set one way or the other by the current?

A. Yes, he did.

Q. What did he say, in your own words, or in substance?

A. Well, he said that the ship was being——

Mr. Ryan: (Interposing) That is objected to on the ground of hearsay, and on the ground that no proper foundation was laid in the pilot's testimony contradicting the pilot, if that is what counsel is

(Testimony of James B. Lawton.)

trying to do—trying to impeach the pilot's veracity.

[2302]

Mr. Long: What was that objection?

The Court: Mr. Ryan is objecting on the ground that it is hearsay, as I understood it, and that no foundation has been laid for impeachment. Will you read the question again, Mr. Reporter?

(Questions and answers read as follows:

“Q. During that period did the pilot make any comment about the ship being set one way or the other by the current?

A. Yes, he did.

Q. What did he say, in your own words, or in substance?”)

Mr. Long: I think, Your Honor, that is a comment made in the course of business by a man in charge of navigation, to this man engaged in the same kind of work, and for that reason, I think it is permissible.

The Court: If it was said in the way of an order given to him, that would be proper, but not any afterthought or reflection.

Mr. Long: I think that is correct. I will ask him.

Q. (By Mr. Long) At any time during the time that the pilot hauled the vessel to the right, concerning which you testified, did he make any comment, or did he say anything with respect to the vessel being set to the westward by the tidal current?

Mr. Ryan: That is objected to as leading, and also on the ground that it is hearsay and, further, on the

(Testimony of James B. Lawton.)

ground that there has been no proper foundation laid for impeachment by the pilot's testimony.

[2303]

The Court: Objection overruled.

Mr. Ryan: Exception.

The Court: Exception allowed.

Q. (By Mr. Long) Just tell us.

A. Yes, he did. At 2:25 the pilot said to me that the current was setting the ship to the westward much stronger than he had figured on.

Q. And at the time of making that comment did he make any change or give any order to the quartermaster in connection with that comment?

A. Well, we had just hauled the ship.

Q. Which way?

A. To the right, or eastward.

Q. Now, what did you do, Mr. Lawton, immediately after the ship struck?

A. I noted the time.

Q. What time was it?

A. 2:44.

Q. And what else occurred right then?

A. The pilot stopped the ship and told me to get the captain.

Q. And what did you do?

A. Before I could get down to get him, he came running in the pilot house in his underwear.

Q. What was said, and what occurred right then and there?

(Testimony of James B. Lawton.)

Mr. Ryan: That is objected to, so far as what was said is concerned, on the ground that it is hearsay.

The Court: The way that it has arisen, the objection is sustained.

Mr. Long: Very well, Your Honor.

Q. (By Mr. Long) What did the captain do?

[2304]

A. The captain came in the wheel house and he said——

Mr. Ryan: (Interposing) That is objected to on the ground that it is hearsay.

The Court: Just state what he did, if anything.

Q. (By Mr. Long) Just state what he did, Mr. Lawton. You cannot say what the pilot said, unless it was in the course of some order given or something to that effect——

Mr. Ryan: (Interposing) Now, please, don't suggest answers to the witness, Mr. Long, and I object to that.

The Court: Mr. Ryan——

Mr. Ryan: (Interposing) I will withdraw that.

The Court: Mr. Ryan—Mr. Ryan, the Court is addressing you right now. The Court has previously warned all counsel in this case that no heated evidence of temper or other heated excitement was going to be tolerated, and I mean it now, and all the rest of the time during the progress of this trial. Don't you in the future violate that direction of the Court, and if you do the Court is going to hold you

(Testimony of James B. Lawton.)

in contempt of this Court. All of the rest of the proceedings in this trial have got to be conducted in an orderly and respectful manner in this courtroom. I have got to hear this evidence and consider it, and that is what I want to do.

Mr. Ryan: I am very sorry——

The Court: (Interposing) Proceed.

Mr. Ryan: It was not in that spirit——

The Court: (Interposing) Proceed. [2305]

Mr. Ryan: That was not the thought——

The Court: (Interposing) Proceed.

Q. (By Mr. Long) You just tell us, Mr. Lawton, what the captain did. You are not allowed to say what he said. Just what he did when he came on the bridge.

A. Well, what he did was pertaining to what he said. I don't know how to answer that.

Q. Did he give any orders?

A. He asked the pilot—he said, "What is the matter?"——

Mr. Ryan: (Interposing) Now, please. That is objected to on the ground that it is hearsay, and the Court has ruled on it.

The Court: You can state any orders that he gave——

Q. (By Mr. Long) Just what orders——

The Court: (Continuing) —or any action that he took.

Q. (By Mr. Long) Just what action did he take and what orders did he give, Mr. Lawton?

(Testimony of James B. Lawton.)

A. It is hard to state it that way.

Q. Well, just do the best you can.

A. He asked the pilot what was the matter, and the pilot said, "I don't know. We are in the middle of the channel". The captain then looked around—took his bearings and said, "Yes, it certainly looks like we are".

Q. What did you do then? Was the captain dressed when he got there?

A. No. The captain was undressed—almost.

Q. All right.

A. Well, then, the chief mate came up to the wheel house, Mr. Cleasby, and the captain told me to go back and get [2306] him the wireless operator and tell him to get ready for immediate duty.

Q. Then what did you do?

A. I followed out his orders. I went back and called the wireless operator and told him that he should get on deck right away, up to the wireless shack.

Q. What, if anything, was done, Mr. Lawton, by the captain, or under his direction, with reference to any engine movements?

A. The captain backed the ship several times, trying to back her off the reef.

Q. Tell us, did the ship move as a result of that engine movement?

A. The ship did not move. She was stuck there.

Q. All right. Now, what did you do after the captain told you to get the wireless operator?

(Testimony of James B. Lawton.)

A. I did a lot of things——

Q. (Interposing) Just in chronological order as near as you can remember them.

A. One of the first things that I remember that I did was that I was told to go and take soundings from No. 2 hatch around both sides of the ship to the stern.

Q. And did you do that?

A. Yes. I took a sailor with me, and that was done.

Q. And how was that done?

A. For taking soundings in shallow water we have a handy little lead and line.

Q. And what did you do with the lead and the line?

A. We dropped the lead over the side of the ship.

Q. Did you take those soundings by that method? [2307]

A. Yes, sir.

Q. Now, taking soundings, did you observe the action of the tide and the direction of the tide?

A. Yes, I did.

Q. Tell us what you observed.

A. When I was taking soundings around the stern I could tell by my sounding line that the tide was affecting it.

Q. In what direction, do you remember, Mr. Lawton?

(Testimony of James B. Lawton.)

A. It appeared to be somewhere between South-west and West.

Q. And after you had finished taking the soundings what did you do next?

A. I went up and reported to the captain; told him the depth of the water around the ship, and he told me to take No. 2 lifeboat and No. 4 lifeboat and get them all ready for abandoning the ship.

Q. Tell us what you did then.

A. I got some of the crew—half of the crew—

Q. (Interposing) On which side of the ship, Mr. Lawton, is No. 2 and No. 4 lifeboats?

A. No. 2 and No. 4 lifeboats are on the port side of the ship.

Q. And with reference to Zayas Island and the ship, which side of the ship?

A. The side towards Zayas Island.

Q. Very well. And what did you do then?

A. We proceeded to take the covers off the boats; the strongbacks off the boats; put in the plugs; put the painters out; took the gripes off the lifeboats; swung them out, as we do every week in our fire boat drill. [2308]

Q. All right. And what did you do then after you got your boats ready?

A. The captain wanted the two boats on the port side lowered down to the railing on the next deck.

Q. Mr. Lawton, go right ahead from there.

A. Well, some of the things that I did I cannot remember just as to the time, and so forth.

(Testimony of James B. Lawton.)

Q. Well, we are not worried about the details. Just give us the chronological order of events as near as you can now recall them.

A. Well, the captain told me—I don't know whether it was right then or not—to give the mate a hand in blocking off dynamite caps, and I did that. And around that time, or maybe at that time the ship started to take a port list.

Q. And about—if you remember, Mr. Lawton, how long was this after the ship had stranded at 2:44, when she started to take this port list? Do you recall?

A. Well, I would say half an hour. Maybe a little less than that.

Q. All right. What did you do then?

A. Either the first mate or the skipper told me to go around to the port side of the ship and see that all the port holes were closed tightly so that if she did list over too much she would not take water in the portholes.

Q. I see. Now, when did you go ashore, if you did go ashore, Mr. Lawton, the first time?

A. The No. 2 lifeboat, as I recall it, was the first boat to leave the ship. [2309]

Q. Did you leave in that boat?

A. No, I did not. Eight or ten men left in that boat. I cannot say just who they were.

Q. Very well. What did you do then? From then on until the time that you left the boat, what did you do then, just briefly?

(Testimony of James B. Lawton.)

A. Why, we told the passengers—we had passengers, and we told them to get their clothes ready; that they would have time to pack up and put them in the lifeboats; and we assigned them the lifeboat that they should get into in case we had to leave in a hurry.

Around that time one of the lifeboats from the starboard side of the ship had been ordered to pull over to Zayas Island—to leave the ship—which they proceeded to do. The other lifeboat on the starboard side had a load of men in it. It was in charge of the second mate. I don't know whether the captain told him to come around, or——

The Court: (Interposing) Do not state it then. Do not speculate.

Mr. Long: Do not state what the captain said.

The Court: Do not speculate. Do not say what you don't know.

Q. (By Mr. Long) Do not speculate. Just tell us what you actually saw there at this time, Mr. Lawton.

A. Well, he started out astern of the ship.

Q. From the starboard side?

A. From the starboard side.

Q. Very well.

A. And I heard him holler, and I went back there, and he [2310] said to throw him a line, which I did, and help him alongside of the ship, on the port side of the ship.

(Testimony of James B. Lawton.)

Q. Why was it necessary to throw him a line, if you know?

A. Because the men rowing the boat could not make headway against the tide or current.

Q. Did you observe at that time which way the tide—which way was the direction of the tide?

A. Well, I could see the tide running.

Q. Which way was the tide running—what direction?

A. It was trying to set their lifeboat southwest.

Q. What happened then?

A. They brought their lifeboat underneath the ladder.

Q. On which side?

A. On the port side of the ship.

Q. Very well. What happened then?

A. Some of them boarded the ship again. I am not sure what the reasons were for boarding the ship, except that I saw them passing coffee and a few blankets, and milk and some provisions—milk to make coffee.

Q. What did that boat do after that?

A. Well, they must have been ordered ashore because I saw them pull off for Zayas Island.

Q. And what did you observe? Did you watch them row towards Zayas Island?

A. Yes, I did.

Q. What did you observe—the action of the boat in their efforts in going to Zayas Island?

(Testimony of James B. Lawton.)

A. Oh, I glanced at the boat from time to time, and I noticed that when they left the ship they were headed well up from the end of the island, and when they made [2311] land over there they were right on the tip of the island.

Q. Was the lifeboat being affected any by the current or tide?

Mr. Ryan: That is leading.

The Court: Sustained.

Q. (By Mr. Long) Could you see by the action of the lifeboat how she was making through the water towards Zayas Island?

A. Naturally, from the tide.

Q. Just tell us how it looked—what you saw.

A. He tried to go this way (indicating) and the tide hit him, and he finally had to go this way (indicating).

Q. All right. Now, what did that mean to you or indicate to you—those observations that you made?

A. Well, at the time it didn't indicate—

Mr. Ryan: (Interposing) I object to that on the ground that it is calling for speculation on the part of this witness. He was not in the boat. He does not know of his own knowledge what they were trying to do.

The Court: Objection overruled.

Mr. Ryan: Exception.

The Court: Exception allowed.

Q. (By Mr. Long) Go ahead and tell us what you observed. Was the current setting them in any direction?

(Testimony of James B. Lawton.)

Mr. Summers: That is leading.

Mr. Long: If Your Honor please, I suggest that one counsel make the objections. I cannot listen to both of them. I do not know which one of them is making the [2312] objection.

The Court: Well, I think that that particular question is leading.

Mr. Long: I think it is, too. I cannot explain it to the witness, but I am endeavoring to explain it. I want him to tell us and to give Your Honor a picture of what he saw there. It is difficult to express it to him.

Q. (By Mr. Long) Just tell us what you saw this boat going towards Zayas Island do. What you saw. What was happening? What occurred there?

A. Well, we saw—we noticed a lifeboat heading for one point of Zayas Island, and she could not make that point. She was being set down the island towards the end of the island. [2313]

Q. (By Mr. Long) What was setting her down the island?

Mr. Ryan: May I move to strike out that last answer on the ground that it is the speculation of the witness regarding where somebody on some other boat was trying to head for. He has no knowledge of his own; he was not on the boat at all.

The Court: The motion is denied.

Mr. Ryan: Exception, please.

The Court: Exception allowed.

(Testimony of James B. Lawton.)

Mr. Long: Will you please read the question?

(Last question read.)

Mr. Ryan: I object to that further as calling for a still greater degree of speculation by the witness.

Mr. Long: If he knows.

Mr. Ryan: He knows nothing of his own knowledge. He was not even on the boat, was not in a position to know.

The Court: The question will have to be conditioned further.

Q. (By Mr. Long) Do you know of your own knowledge what, if anything, was affecting the lifeboats moving through the water?

A. Why, yes.

Q. What could you see?

A. Naturally I could see it was the current setting it. There was nothing else that could affect it.

Q. What direction was the current affecting the boat?

A. Setting those lifeboats, those that went ashore, to the southwestward.

Q. What did you do after that yourself, after these boats [2314] left? About what time was that, do you recall?

A. I don't know the time for certain.

Q. You didn't look at a watch—did you look at a watch?

A. No; I didn't have any watch on me.

Q. What did you do then?

(Testimony of James B. Lawton.)

A. All the time the ship was listing more to port.

Q. When did you leave the "Denali"?

A. Well, the third boat pulled off after the ship had listed over quite a bit—

The Court: Now, that makes several times you have said that, and counsel is asking you what you did, and not what you saw as to the ship.

Q. When did you leave the "Denali"? Let us get along to that point.

A. We waited until she got a little bit more of a list, which showed that it was dangerous.

Q. Who do you mean by "we", Mr. Lawton?

A. I mean the remaining men on the ship.

Q. Who were they, what officers?

A. Capt. Healy, Mr. Cleasby, the first mate, one of the engineers, myself, and several members of the crew.

Q. What did you do, and when did you leave; just tell us in your own way, as briefly as you can, what happened then?

A. The Captain decided to stand off the ship a couple of hundred yards and see what was going to happen, so we got into the lifeboat, all of us, and had no more than shoved off from the ship's side when we heard a sort of roar or crash, or something, and the ship immediately straightened up. She had buckled in half [2315] right forward of the bridge.

Q. About what time was this, as near as you can recall?

(Testimony of James B. Lawton.)

A. Well, it must have been around 6:30, I guess.

Q. What happened then; what did you do? Let me ask you this question preliminary to that; at the time the vessel struck at 2:44 what were the weather conditions?

A. At the time she struck?

Q. That is right.

A. Well, at the time she struck the sea was smooth.

Q. Any amount of wind?

A. A slight wind, yes.

Q. Did the weather conditions change that morning, Mr. Lawton?

A. Yes; they did.

Q. Tell us about that.

A. After we stranded it started to blow up a little bit, the sea became rougher until the time we left—well, she wasn't real rough, but it was not smooth by any means.

Q. At the time you left the "Denali" the first time, as you have just described had the Coast Guard Cutter "Cyane" arrived alongside?

A. No; she had not.

Q. What happened after the ship broke in two, as you have described; what did you do?

A. We wanted to stand off, which was the captain's orders—stand off a couple of hundred yards from the ship. He didn't want to go too far away. But we were unable to do so on account of the strong current.

(Testimony of James B. Lawton.)

Q. How did it affect the boat? [2316]

A. We had six men rowing, and we couldn't hold our position. The captain gave orders to drop astern and grab hold of the log-line, which was still streaming.

Q. What log-line do you refer to?

A. The patent log-line.

Q. The taffrail log-line?

A. The taffrail log-line, yes.

Q. Which way was the current running then, Mr. Lawton?

A. Southwestward.

Q. Could you give us any idea as to the force of the current, as you observed it?

A. Well, when we took hold of the log-line I happened to be the one that was holding onto the log-line, and the current was affecting the ship—the lifeboat, I mean—strongly enough so that I couldn't hold onto it alone, I had to ask for assistance.

Q. Which way was the current running, as you observed it, under those conditions, while holding onto the log-line there?

A. Well, I would say it was between southwest and west.

Q. How long did you hang onto the log-line there in that manner?

A. Oh, I don't know the time, exactly, but it must have been around 40 minutes.

The Court: At what time of day was that?

(Testimony of James B. Lawton.)

Q. (By Mr. Long) About what time was that?

A. That was around 7:00 sometime.

Q. When was it with relation to the time that the "Cyane" arrived, before or after?

A. Well, it was before the "Cyane" arrived.

[2317]

Q. How soon after that did the "Cyane" arrive, as you remember it?

A. When we were holding onto the log-line?

Q. That is right.

A. Oh, she arrived in an hour or hour and a half later.

Q. Tell us what you did after you let go the line, if you did, or what happened from that time on. Take us along here.

A. We were under orders, all of us, we were doing what the skipper told us.

Q. What did you do?

A. He ordered the lifeboats back to the ship.

Q. What happened?

A. So we pulled up to the ship.

Q. On which side?

A. On the port side, amidships, and we all went aboard again. Shortly after that the Coast Guard Cutter "Cyane" arrived. I am not sure of the time it arrived, even, but it was shortly after 8:00, I believe.

Q. What occurred after the Coast Guard Cutter arrived?

(Testimony of James B. Lawton.)

A. They laid off about, oh 100 yards, maybe, from the site of our ship, and our captain talked with the Commander, or whoever runs those boats, over several details, which I did not pay any attention to, but I did hear him ask the Commander—

Q. (Interposing) You cannot tell what he said, because counsel would object to that. Just what did the “Cyane” do?

A. We had eleven pigs aboard the ship, and the Captain wanted them transferred to the “Cyane”, if possible. [2318] It was agreed on, and the “Cyane” pulled over alongside us. At that time it was getting rougher—it was a pretty good sea running.

Q. Was there any wind at that time?

A. There was a little wind, too, yes.

Q. Do you recall the direction of the wind?

A. From the south, somewhere.

Q. Just tell us what happened.

A. They succeeded in transferring the eleven pigs from the “Denali” to the “Cyane”, but in doing so they lost their topmast.

Q. Who do you mean lost the topmast?

A. The “Cyane”.

Q. How?

A. One of our booms got loose and snapped it off. And also a davit, or two davits, or something like that. I forget just what it was. As soon as they got the pigs transferred safely they hauled off again.

Q. What happened then?

(Testimony of James B. Lawton.)

A. The captain ordered all hands off the ship, all the crew and men that were left aboard the ship, and they got in the lifeboats, except the skipper, the first mate and myself.

Q. Was that the last boat?

A. Yes; it was the last boat.

Q. Tell us what occurred then.

A. The Captain told the men in the boat to pull over on board the "Cyane", which they did. The three of us were left alone, and there really wasn't anything to do—we had done all we could to save the ship. [2319]

Q. About what time was this, as best you remember, Mr. Lawton?

A. Oh, I don't know. It was after 10:00 o'clock, anyhow.

Q. 10:00 o'clock in the morning?

A. Yes.

Q. What occurred then?

A. Well, we went forward through the shelter deck and looked at the ship where she had split in half. It looked pretty bad. There was **nothing** could be done about it. We went up and sat down by the galley to talk things over.

Q. When did you leave the ship after that, Mr. Lawton?

A. At that time we had no lifeboat aboard the ship—

Q. (Interposing) How did you leave?

(Testimony of James B. Lawton.)

A. The Coast Guard Cutter had pulled around from our port side around to our starboard side, and was laying half a mile or something like that away from our ship.

Q. How was the weather at that time?

A. It was getting worse all the time. It was quite rough then.

Q. Then what happened?

A. We took the ship's megaphone and hollered over to the "Cyane" and asked them if they couldn't come up close enough so we could throw them a line.

Q. What did they do?

A. They proceeded to do just that. We threw a heaving line and asked them if they wouldn't tie that lifeboat that brought our men over there onto the heaving line. When they had it all fast we pulled the lifeboat over to the ship and made her fast amidships, on the port side.

Q. Then what did you do? Was the "Denali" pounding, or doing [2320] anything at that time? Tell us what she was doing, if she was doing anything.

A. Well, as time went on the ship started to shake, the sea got rougher and she started to shake and shiver a little.

Q. What did you do after you got the lifeboat? I say "you", but I mean you and the captain and the first officer, the three of you there. What occurred?

A. Well, we told the captain.

(Testimony of James B. Lawton.)

Q. (Interposing) You cannot say what you said, but just go right ahead, Mr. Lawton, and tell us what you did, and what occurred.

A. We convinced the captain—is that right?

Q. All right; go ahead.

A. That he couldn't do no more aboard the ship, so he agreed to leave with us.

Q. Did he want to stay aboard the ship, is that it?

A. Yes; he did. So before we left the captain said to get the navigation instruments off the bridge and put them in our lifeboat.

Q. What did you do with respect to that?

A. That is just what we did. We got the compasses, the bearing board and charts, the azimuth book, put them all by the side of the ship and lowered them into the lifeboat.

Q. What was the state of the weather at that time? Had it increased any?

A. It was increasing, getting rougher all the time, very fast.

Q. Tell us what you did then? [2321]

A. Well, a few minutes later we crawled down the ladder and got into the lifeboats and tried to start out for the Coast Guard Cutter, which was lying on our starboard side again, about half a mile off from us.

Q. Tell what experiences you had in getting to the "Cyane", or what you did.

(Testimony of James B. Lawton.)

The Court: Before he does that; will you ask the witness what, if anything, was loaded into this lifeboat.

Mr. Long: Yes, Your Honor, I will do that.

Q. (By Mr. Long) What was loaded into this lifeboat, Mr. Lawton?

A. We had lowered the ship's navigation instruments down into the boat.

Q. Were the compasses put in the lifeboat?

A. Yes; the compasses.

Q. How about the charts?

A. The charts, yes; all the navigation instruments that we took.

Q. The azimuth book?

A. Yes, the azimuth book.

Q. Then what occurred?

A. We started to go over to the "Cyane", the Coast Guard boat.

Q. How was the sea and weather at that time, when you started to do that?

A. The sea was real rough at that time, and we had plenty of trouble.

Q. Was the lifeboat taking any water?

A. There was water and oil in the boat.

Mr. Summers: That is objected to as leading.

[2322]

The Court: Yes.

Q. What was in the boat, besides yourselves and this equipment?

A. Water and oil.

(Testimony of James B. Lawton.)

Q. What was on the surface of the water around the ship?

A. Plenty of oil, crude oil.

Q. Just tell us what you did.

A. We wanted to row over to the "Cyane".

Q. How many men were in the boat at this time?

A. The captain, the first mate and myself.

Q. What did you do?

A. Well, we couldn't do much rowing. We tried, but we couldn't make any headway.

Q. Why not?

A. Well, the weather was so rough, strong current. The "Cyane" saw our trouble, and also a lifeboat from Zayas Island. The "Cyane" kept pulling in closer to us, and the lifeboat from the island came out, and after monkeying around a little, trying to get alongside of us, it finally did, and transferred about six men into our boat, so that we would have enough men to properly handle the lifeboat.

Q. And what did you do?

A. The "Cyane" had come in quite close, and in a few minutes we had rowed up to her and got alongside.

The Court: At this point we will take the noon recess, until 2:00 o'clock p.m.

(Whereupon a recess was taken until

2:00 o'clock p.m., November 9, 1937.) [2323]

(Testimony of James B. Lawton.)

November 9, 1937,

2:08 o'clock P.M.

Court convened pursuant to adjournment;

All parties present.

The Court: You may proceed with the case on trial.

Mr. Long: Take the stand, Mr. Lawton.

JAMES B. LAWTON,

resumed the stand for further examination.

Further Direct Examination.

By Mr. Long:

Q. Mr. Lawton, prior to the noon recess you had described how you, Captain Healy and the first officer had placed certain pieces of equipment in this lifeboat which you secured to the "Cyane". I believe at the time when the examination ceased you were telling us about making progress to the "Cyane". Just tell us what occurred from then on; when you got aboard the boat, and so forth.

A. The sea was pretty rough at that time of the morning. We went alongside the side of the "Cyane", and the men all watched their chance. First the lifeboat would be down below the "Cyane", and then it would be up on top, and as they had a chance they all climbed aboard the "Cyane". One of the officers on the "Cyane" said that there were three or four of our crew on Zayas Island yet, and he wanted to get them and move away from

(Testimony of James B. Lawton.)

the spot where the "Cyane" was in. I told him that I would [2324] go in the boat if he would put some of his men in there. He put six Coast Guard sailors in with me, and we pulled over to a little bay at the south end of Zayas Island. We picked up three or four of the "Denali's" crew and headed back towards the "Cyane". We got alongside all right. She was going ahead, and diving and rolling quite bad.

Q. When you say "she" what do you refer to?

A. I refer to the "Cyane".

Q. Go ahead.

A. When we got alongside the boat was not just laying alongside. One moment she would be way down at the bottom of the sea, and the "Cyane" was above us, and at the next big swell that would come along the "Cyane" would be down below and we would be on top.

The men all climbed aboard the "Cyane" and I asked somebody on deck to take the ship's navigation instruments which we had in the bottom of this boat.

Q. Was there anything else in the boat at that time?

A. Yes. There was a lot of water and oil in the boat.

Q. All right. Just go ahead from there.

A. Well, the boat was banging up against the side of the "Cyane" on account of the waves hitting it. I stepped down to the bottom of the lifeboat and

(Testimony of James B. Lawton.)

got one of the compasses. They are not very handy to hold onto. I used two hands to hold onto the compass. I stepped up into the side athwart of the lifeboat and was waiting a chance until we came up level with the deck of the "Cyane" to pass over this compass aboard to someone standing up at the rail. In doing so I lost my balance [2325] and started to fall in between the lifeboat and the Coast Guard Cutter. In order not to fall in between the sides of the boats I threw myself backwards, landing in the bottom of our lifeboat, with the compass on top of me.

The commander, or one of the officers on watch hollered down to get out of the lifeboat, that it was not safe in it any more——

The Court: (Interposing) To get out of the lifeboat?

The Witness: Yes, sir.

Q. (By Mr. Long) Just speak up a little more distinctly, Mr. Lawton.

A. All right. And I said, "All right". There was a bundle of charts laying in the corner of the lifeboat where I was at, and while waiting for the lifeboat to come up level with the "Cyane" I grabbed for this bundle of charts but only succeeded in getting one of them. Well, I didn't stop for any more. I had a chance to scramble over on the "Cyane", so I did that.

Q. What happened then? What happened to the lifeboat?

(Testimony of James B. Lawton.)

A. The lifeboat was caving in, getting full of water, and it was swamped. They ordered the lifeboat put astern, towed on the line. They towed them for a while——

The Court: (Interposing) Meaning what? Towed what for a while?

The Witness: The "Cyane" towed the "Denali's" lifeboats, or what was left of them. Several of them were caved in, and the others were full of water by that time. [2326]

Q. What happened to them then?

A. Two of them sank.

Q. What is that?

A. Two of them sank.

Q. What was done with the others?

A. The other two were so water logged that the commander ordered them cut adrift.

Q. And what was done with them?

A. They were cut adrift. The line—the tow line that we towed them with was cut.

Q. Was any of that equipment to your knowledge, Mr. Lawton, ever saved that was within that boat other than the chart that you have mentioned?

A. None to my knowledge.

Q. Now, where did the "Cyane" take you and the rest of the crew?

A. We went over and laid a couple of miles off of the starboard side of the ship for a while. I don't know for what time. Finally there was noth-

(Testimony of James B. Lawton.)

ing to do. They headed the "Cyane" for Ketchikan.

Q. Did you see the "Denali" after that?

A. No, I did not.

Q. Did you go to the scene of the wreck the following morning?

A. No.

Q. What was the condition of the wreck as you recall, Mr. Lawton, when you left?

A. As I recall it, the last time I saw it she was broke in two forward of the bridge, and she was afire.

Mr. Long: That is all.

The Court: You may cross examine. [2327]

Cross Examination.

By Mr. Ryan:

Q. When did you first tell Captain Healy of the "Denali" about the heading the vessel was on at the time of the stranding, and of this hauling to the east or right?

A. Will you read that question again, please?

(Question read)

Q. (Continuing) That you have testified to.

A. I don't remember of ever telling him or having a conversation about that.

Q. You were on the bridge on watch at the time of the stranding, weren't you?

A. Yes, I was.

Q. And Captain Healy never asked you what course the vessel was steering at the time of the

(Testimony of James B. Lawton.)

stranding, or about the circumstances of the stranding at all at any time, is that your story?

A. Yes, sir. Captain Obert was the officer in charge of my watch.

Q. Wasn't Captain Healy the master of that ship?

A. Yes, sir, he was.

Q. Didn't he ever ask you what your knowledge was of the courses the vessel was steering at the time of the stranding, and what courses she was on from Triple Island to the point of stranding?

A. No, I cannot recall that he did.

Q. And you never told him?

A. I just explained to you that the officer in charge of that watch was Captain Obert. I was under him.

Q. The question is, and you never told Captain Healy, the [2328] captain of that ship, at any time what you knew about this heading of the ship at the time that she struck the reef—the course that she was on, or about these various haulings to the right that you testified to today. Is that what you testify?

A. I mean that I——

Q. (Interposing) Just answer that by yes or no. Did you or did you not tell Captain Healy about that?

A. No, I did not.

Q. You did not?

A. No.

(Testimony of James B. Lawton.)

Q. Why not?

A. Because I don't recall him ever asking me.

Q. And you didn't think it was your duty to tell him?

A. No, sir, I did not.

Q. And you stayed on the ship with Captain Healy after the pilot left the ship?

A. Yes, I did.

Q. And you were on there for some time?

A. Yes.

Q. For some hours?

A. Yes.

Q. And then you went with the captain on board the Coast Guard Cutter "Cyane", didn't you?

A. We all went aboard the "Cyane".

Q. Yes. And you were with Captain Healy all the way down to Seattle, weren't you?

A. Yes, I was.

Q. And then when you arrived at Seattle to what officers did you go to make a statement? [2329]

A. When we arrived in Seattle?

Q. Yes.

A. I went straight home.

Q. Then what officers did you go to later on?

A. Later on we went to the Steamboat Inspectors.

Q. Did you go to any other offices before that?

A. Not that I can recall, I did not. [2330]

Q. (By Mr. Ryan) You did not go to Mr.

(Testimony of James B. Lawton.)

Murphy's office with the other officers, shortly after the vessel arrived at Seattle?

A. I don't recall that I did.

Q. Did you go to any officer's office of the Alaska Steamship Company after you arrived at Seattle, shortly after the stranding?

A. No, I did not.

Q. With whom did you go up to the Steamboat Inspectors' office?

A. I went up with myself, I imagine.

Q. Who told you to go up?

A. They notified me some way. I can't recall.

Q. Who notified you?

A. I don't know.

Q. To whom did you tell the circumstances of the stranding, after you arrived at Seattle?

A. The Inspectors had an investigation.

Q. Before you went to the Inspectors.

A. I didn't tell it to anybody.

Q. Are you sure about that?

A. I don't recall telling it to anybody.

Q. Didn't you go up to the Steamboat Inspectors' office with a lawyer in Mr. Bogle's firm, counsel for Petitioner?

A. I certainly did not. They might have been up there, but I didn't go with them.

Q. You saw them there, didn't you?

A. I don't know one from another, to tell you the truth.

(Testimony of James B. Lawton.)

Q. So your story is that when you came down here to Seattle you didn't report to anybody, nobody asked you about [2331] anything, and then somebody whom you cannot remember, told you to go up to the Inspectors, and you just walked in; is that your story?

A. It might not have been just like that.

Q. Then tell us just how it was.

A. I don't remember of talking to anybody. I know I was home most of the time.

Q. Tell us what you were doing the rest of the time, when you were reporting to somebody about what had happened, as the officer on watch with the pilot?

A. I didn't report to anybody.

Q. You didn't tell anybody about the circumstances of the stranding, or about these haulings to the right, or anything of that sort?

A. I can't recall that I did.

Q. Can you recall that you did not?

A. I am pretty sure I did not.

Q. Is this your handwriting in the deck log book, from midnight down to and including the time of the stranding, on May 19, 1935, referring to Claimants' Exhibit A-4?

A. You mean on watch, sir?

Q. Yes.

A. Yes, sir; that is my handwriting.

Q. All of it is your handwriting, isn't it?

A. Yes; it is.

(Testimony of James B. Lawton.)

Q. When did you make those entries?

A. At the time.

Q. What time?

A. At the time noted there for each entry.

Q. Well, take the first line, when did you make that entry [2332] (showing), referring to the pilot house log book, Claimants' Exhibit A-4?

A. I made that at 12:06.

Q. A.M., on May 19, 1935?

A. Yes.

Q. When did you make the next entry?

A. At 1:00 o'clock.

Q. A.M., on May 19, 1935?

A. Yes.

Q. When did you make the next entry?

A. At 2:00 o'clock.

Q. A.M. on May 19, 1935?

A. Yes, sir.

Q. When did you make the next entry?

A. At 2:37.

Q. A.M., on May 19, 1935?

A. Yes, sir.

Q. What is that entry?

A. At 2:37, south end Zayas Island abeam.

Q. Read the rest of what you put on there at that time, what you entered?

A. I entered the same course.

Q. Read what you entered there at 2:37 A.M. on May 19, 1935, in that log book.

(Testimony of James B. Lawton.)

A. 37 minutes from 2:00 o'clock, to 2:37, is that what you mean?

Q. Read all that you entered there at 2:37 a.m. on May 19, 1935, in that deck log book of the "Denali", Claimants' Exhibit A-4.

A. North $\frac{3}{4}$ West for pilot house course; bridge compass [2333] North $\frac{3}{4}$ West; log 596.9; tide ebbing; wind was northwest wind, hazy.

Q. You knew that entry was false at the time you made it, did you not?

A. I don't know what you mean.

Q. You knew the vessel was not on a North $\frac{3}{4}$ West course at that time, either by standard or by steering compass, didn't you?

A. I knew in Alaska waters it is the custom in piloting the ship to not enter the various changes.

Q. Well, you knew that was false at the time that you entered it, didn't you?

A. I didn't consider it false, no.

Q. You took that bearing yourself, did you not?

A. On the end of Zayas Island?

Q. Yes.

A. Yes; I did.

Q. And you wrote in there the time you took the bearing?

A. Yes.

Q. And that you took it on the south end of Zayas Island?

A. Yes.

(Testimony of James B. Lawton.)

Q. And that the heading of the ship by standard compass was North $\frac{3}{4}$ West?

A. Yes.

Q. And that the heading of the ship by pilot house compass was North $\frac{3}{4}$ West, did you not?

A. Yes, sir.

Q. Now, you know as a licensed officer, that that entry is both false and misleading, don't you; and you knew it at the time? [2334]

A. I know that that entry is according to the custom on the Alaskan run. If we entered all the courses we steered on a trip to Alaska we would have to have a stack of books a foot high. Everybody else knows that.

Q. Please answer the question. Read the question. (Last question read.)

A. I know that was not the course we would actually steer, yes.

Q. In other words, you moved the ship from a place where you knew the ship was to some other place by putting the bearing in such a way that whoever read the log book would think the ship was at a point on a North $\frac{3}{4}$ West course, so that the island would be abeam, fixing one place, when you knew in fact that the vessel was in an entirely different place, on a different course, so that if you put down that other course when you took that abeam bearing whoever read it would know the actual truth, isn't that so?

A. These entries——

(Testimony of James B. Lawton.)

Q. (Interposing) Answer that yes or no, please.

Mr. Long: Read him the question.

Q. (By Mr. Ryan) Answer that yes or no, first, and then you can explain it if you want to.

Mr. Long: Read the question to the witness.

Mr. Ryan: The witness has not said he doesn't understand the question.

Mr. Long: I cannot follow it in order to make an objection, and I ask that the question be read again.

The Court: The Court will direct that it be read again, and if you understand it after it is read you can [2335] answer it, and in the future you keep your mind on the specific form of the question, and the matter of whether or not it should be answered will be dependent upon the objections made and the ruling of the Court. Read the question. (Last question read.)

The Witness: Do you wish me to answer yes or no to that?

Q. (By Mr. Ryan) Answer yes or no and then explain your answer.

A. I cannot answer it yes or no, a question like that.

Q. Then answer it the best you can.

The Court: Counsel has asked that you answer it in any way you best can.

Mr. Long: Answer it in your own way.

Mr. Ryan: Please read it again.

(Testimony of James B. Lawton.)

The Witness: I do not exactly get the drift of your question.

Mr. Ryan: I will ask it again.

The Court: Very well. Try to make it shorter, Mr. Ryan, if you can.

Q. (By Mr. Ryan) You know that if you record in your log book that a ship is on a certain course, say North $\frac{3}{4}$ West, and that you have taken an abeam bearing of a known landmark at a given time, that you or anybody else can plot that position on the chart as a known place where the ship is, don't you?

A. Yes; we could.

Q. And you further know that if you change that course and state falsely that it was some other course, that then whoever tries to plot that on a chart will be misled, [2336] because the abeam bearing from it will run in an entirely different direction, and the ship will be at a different place. You know that, don't you?

A. No, I do not.

Q. All right; I will ask you——

A. (Interposing) I know what you mean.

Q. Then if you do, answer it.

A. Our courses, headings to the right——

Q. (Interposing) I am not asking you about anything else; I am asking you that specific question, and if you do not understand it, say so, and if you do understand it, answer it.

(Testimony of James B. Lawton.)

A. Read that again, will you, please? (Question read as follows:

“And you further know that if you change that course and state falsely that it was some other course, that then whoever tries to plot that on the chart will be misled, because the abeam bearing from it will run in an entirely different direction, and the ship will be at a different place. You know that, don't you?”)

A. Well, nobody is going to try to plot that, when the tides in that place are so strong, and we make notations on the side—which we were going to do—nobody would have to plot that course out.

Q. Your answer to the question is “yes”, then, is it?

Mr. Long: I think, Your Honor, the answer is complete.

The Court: The objection is overruled.

The Witness: Nobody would refer to that the next [2337] time going through. We would have had a notation “Strong ebb tide, course not to be relied on.” That is the way you mark it on the Alaska run.

Q. Where is any entry like that in this log book?

A. Well, the ship happened to strike, and we had something else to do without writing a story in the log book.

Q. There isn't any such entry in the log book?

(Testimony of James B. Lawton.)

A. We had lives to answer for.

Q. Answer that yes or no, and do not spar around.

A. Well, you can see there is no entry like that.

Q. All right.

The Court: Hold down your voice, Mr. Ryan. The Court has instructed you fully on that.

Mr. Ryan: Yes, Your Honor.

The Court: And I want counsel in making objections to hold down his voice and not storm at this witness. Proceed.

Q. (By Mr. Ryan) When did you make this next entry in that log book, dated May 19, 1935 (showing)?

A. Do you mean at 2:44?

Q. Yes.

A. I noted the time at 2:44. I am not sure if I made the entry right at the moment or not.

Q. When did you make it, according to your best recollection?

A. My best recollection would be 2:44.

Q. That is the moment the ship actually struck, isn't it?

A. Well, not the moment. You cannot go by a moment, exactly.

Q. What is your best recollection as to when you made that entry? [2338]

A. I believe 2:44 is awfully close to it.

Q. It is made in red pencil, is it not?

A. Yes; it is.

(Testimony of James B. Lawton.)

Q. Seven minutes before you were making entries in black pencil, weren't you?

A. Yes. That doesn't signify a thing, except—

Q. (Interposing) When were these entries from 6:00 p.m., May 18, 1935, to midnight, made, if you know, in this deck log book, Claimants' Exhibit A-4?

A. What time did you say?

Q. I am asking you what time they were made, or when they were made?

A. All these entries?

Q. Yes; if you know.

A. The 2:00 o'clock entry was made at 2:00 o'clock.

Q. Were you there? Did you make that entry?

A. Yes, I did.

Q. I am asking you about the entries from 6:00 p.m. to midnight, first, on May 18, 1935, as entered in that deck log book. When were they made, if you know?

A. They were made between 6:00 o'clock and midnight.

Q. Do you know that of your own knowledge?

A. No; I do not.

Q. Do you know when they were made?

A. It gives the time right here when they were made.

Q. You do not know when they were made, is that your answer?

A. I cannot recall that I know when they were made.

(Testimony of James B. Lawton.)

Q. There are erasures in that column there recording the log readings, are there not?

A. That watch? [2339]

Q. From 6:00 p.m., May 18, to midnight (showing).

A. Well, I certainly wouldn't swear that there were erasings made there.

Mr. Ryan: May I show it to the Court. (Counsel shows document to the Court.)

The Court: Is this the same book on which the subject of erasures was previously gone into?

Mr. Ryan: Not that particular point, Your Honor.

Mr. Long: Was this witness on watch, Mr. Ryan?

The Witness: It was not my watch, and I had nothing to do with that part of the evening.

Q. (By Mr. Ryan) Did you make those erasures in that log book between 6:00 p.m., May 18, 1935 and midnight?

A. I told you I wasn't on watch.

Q. I do not care whether you were on watch or not; I want to know whether or not you made those erasures?

A. No; I did not make them.

Q. You did not make them?

A. Of course not.

Q. Did you write in those new figures that are there, that were written in after the erasures were made?

(Testimony of James B. Lawton.)

A. No; I did not.

Q. You are positive about that?

Mr. Long: May I see the book?

Q. (By Mr. Ryan) Will you show me in that deck log book your other handwriting, running right back from the time of the stranding? Indicate the pages and the dates and the entries which are in your handwriting.

Mr. Long: Have you any objection to me looking at the thing you are referring to? [2340]

Mr. Ryan: The witness is looking at it now.

Mr. Long: Have you any objection to my looking at it?

Mr. Ryan: No; none at all.

Mr. Long: May I look at it, Your Honor?

The Court: Yes, you may.

The Witness: What was your question? (Question read as follows:

“Q. Will you show me in that deck log book your other handwriting, running right back from the time of the stranding? Indicate the pages and the dates and the entries which are in your handwriting.”)

Do you want all of them?

Q. Mr. Ryan: Read the question to him.

The Court: Yes; you go right ahead and point out all of those which you can.

The Witness: May 17th?

The Court: And identify the place in the book where it is, either by the watch or by the position

(Testimony of James B. Lawton.)

or page, or some method of identification of the place where it may be found.

The Witness: On the 12:00 midnight watch, on May 17th.

The Court: Beginning that watch or ending at that time?

The Witness: Beginning that watch, beginning at 12:08, and ending at 4:00 o'clock.

The Court: Proceed right along now.

Q. (By Mr. Ryan) 4:00 a.m. on May 17th, is that it? [2341]

A. Yes, sir.

Q. How about May 18th?

A. 2:00 a.m. in the morning, May 18th.

Q. Down to what time?

A. 4:00 a.m.

Q. May 18th. No other entries of yours on May 17th, except from midnight to 4:00 a.m., May 17th?

A. No. May 19th; 12:06 a.m. to 2:37 a.m.

Q. The entry at 2:44 a.m. is also your handwriting, isn't it?

A. Yes; it is.

Q. And the other writing there. Now, May 18th—they are the only entries in your handwriting from midnight down to 4:00 a.m. on May 18th?

A. That is all.

Q. On May 17th are the only entries in your handwriting from 12:00 midnight to 4:00 a.m.?

A. May 17th?

Q. Yes.

(Testimony of James B. Lawton.)

A. No; there is one more entry; 5:05 p.m. in the afternoon of May 17th.

Q. Any entries from then on until midnight?

A. No.

Q. What entries on May 16th are in your handwriting?

A. None.

Q. Are you sure there are no other entries in your handwriting, excepting those you have just given us, in that pilot house log book; is that so?

A. I cannot see any.

The Court: The answer was "I cannot see any." Proceed.

Q. What heading or course was the "Denali" steering at the [2342] moment she struck the reef on May 19th, 1935?

A. She was steering North $\frac{3}{4}$ East.

Q. You are positive about that?

A. Yes, I am.

Q. Did you or did you not, on May 24, 1935, at the investigation before the United States Steamboat Inspectors, in Seattle, when you were under oath to tell the whole truth, testify as follows, page 13 of the official transcript of the investigation of the United States Steamboat Inspectors:

"Q. When the vessel struck it was steering North $\frac{3}{4}$ West?

A. Yes, sir."

Did you or did you not so swear under oath at that time?

(Testimony of James B. Lawton.)

A. I don't remember making that answer. If I did, the answer is wrong.

Q. Did you or did you not so testify under oath at that time?

A. I said I don't remember of making that answer.

Q. Do you remember not making that answer?

A. I don't remember the question, even.

Q. I will read it to you again. Did you or did you not testify under oath before the United States Steamboat Inspectors, in Seattle, on May 24, 1935, at the official investigation of this stranding, as follows:

“Q. When the vessel struck it was steering North $\frac{3}{4}$ West?

A. Yes, sir.”

Did you or did you not so swear under oath at that time?

A. If I made that——

Q. (Interposing) Answer yes or no, please.

[2343]

The Court: Did you?

The Witness: I don't remember making that answer.

Q. Is that answer true or false?

A. It is not false; it is incorrect, if I so answered.

Q. Did you or did you not testify under oath before the United States Steamboat Inspectors, in

(Testimony of James B. Lawton.)

Seattle on May 24 1935 at the official investigation of this stranding as follows:

“Q. The pilot house compass is North $\frac{3}{4}$ West?

A. Yes, sir.”

Did you or did you not so testify under oath?

Mr. Long: That is another one?

Mr. Ryan: That is another one.

Mr. Long: What page are you talking about?

The Court: Each time will you kindly give the page reference.

Mr. Ryan: Yes; page 13.

The Witness: Please read the question again. (Last question read.) If I——

The Court: (Interposing) Well, say whether you did or not.

Mr. Ryan: Answer yes or no.

The Witness: Will you read the question again, please? (Question re-read.) That referred to the pilot house compass——

The Court: You can explain later on whether it expressed the truth or not, but the question is, did you testify as counsel read to you from the record indicating that you did? Did you so testify?

The Witness: Your Honor, may I look at that question? [2344]

The Court: No. Counsel is testing your recollection, and he has a right to ask you without you looking at anything. Answer it if you can.

(Testimony of James B. Lawton.)

The Witness: Did you read the full question to me?

The Court: Well, answer yes or no, or whether or not you remember.

The Witness: I do not remember that. [2345]

Q. You deny that you so testified?

A. No, I do not.

Q. If you did so testify was that testimony true or false in fact?

A. I would have to read that over before I could answer you.

Q. Will you answer that question? If you did so testify, was that testimony true or false in fact?

A. I did not testify falsely to the Inspectors at any time.

Q. You deny then, do you, that you answered the questions that I have read to you as I have read them to you from the official transcript of the Steamboat Inspectors' investigation, do you? You deny that, is that right?

A. No.

Q. You don't deny that?

A. I don't deny them.

Q. Why then——

A. (Interposing) I don't remember making them.

Q. Why then didn't you tell the truth to the Steamboat Inspectors then when they asked you the questions?

(Testimony of James B. Lawton.)

A. I don't remember them questions. The questions were——

Q. (Interposing) I want to give you every opportunity here. Do you deny that you were asked those questions and gave those answers that I have read to you by the Steamboat Inspectors on May 24, 1935, at the official investigation of this stranding?

A. I don't remember the question, but if my answer was, "Yes" it is incorrect. I testified here that the ship was steering North $\frac{3}{4}$ East, and that is what she was steering, and I never once said that the ship was steering North $\frac{3}{4}$ West when she struck. You show that to me, [2346] will you, please?

The Court: Counsel has a right to inquire of you to ascertain your recollection.

Mr. Ryan: All right.

Q. (By Mr. Ryan) In other words, if this is the testimony you gave before the United States Steamboat Inspectors, it is false in fact, isn't it?

A. Well——

Mr. Long: (Interposing) I would ask that the witness' attention be directed to which question he is referring to.

Mr. Ryan: I am referring to both of them.

Mr. Long: Well, they pertain to different times—they pertain to two different times.

The Court: The objection is overruled.

(Testimony of James B. Lawton.)

Mr. Long: I think that he should direct his attention to what particular time he is asking about in this question.

Mr. Ryan: I do not want there to be any doubt about it, and I will ask you again in view of counsel's interruption here.

Q. (By Mr. Ryan) Did you or did you not testify under oath before the United States Steamboat Inspectors at Seattle on May 24, 1935, at the investigation of this stranding as follows,

“Q. When the vessel struck it was steering North $\frac{3}{4}$ West?

A. Yes, sir.”

Did you or did you not so testify under oath?

A. I just told you that my answer was “Yes”—

[2347]

The Court: (Interposing) Now, Mr. Lawton, that is not the situation. Counsel has asked you if you said so and so upon being asked a certain question at a certain time, and counsel now has a right to ask you whether or not you did, and the Court must compel you to state whether or not you did or did not so testify at that time. The Court does require you to answer that question.

A. I don't remember giving that answer to that question. If I did give it, I misunderstood the question.

Q. (By Mr. Ryan) But you don't deny that you gave it, do you—that you gave that answer at that time?

(Testimony of James B. Lawton.)

A. You have my answer there in front of you.

Q. Answer my question yes or no, and then go on and explain your answer, if you wish, but please answer it yes or no, so that we can make some progress. Please read the question, Mr. Reporter.

The Court: You should answer the question.

A. No, I do not deny it, but if my answer was "Yes, sir", it was incorrect, and I must have misunderstood the Inspectors—I must have understood the Inspectors to refer to our course from Triple Island, which was entered by me in the log book several times as North $\frac{3}{4}$ West on both compasses. At no time did I tell them that it was steering North $\frac{3}{4}$ West when we struck.

Q. All right.

The Court: Now ask him another question.

Mr. Ryan: All right.

Q. (By Mr. Ryan) Now, this log book entry that you made, at 2:37 A.M., on May 19, 1935, in this deck log book of the [2348] "Denali", Claimants' Exhibit A-4, states that the "Denali" at 2:37 A.M. was on a course, by bridge compass, of North $\frac{3}{4}$ West, and on a course, by pilot house compass, of North $\frac{3}{4}$ West, doesn't it?

A. Yes, sir.

Q. In your handwriting?

A. Yes, sir.

Q. And you knew that the Steamboat Inspectors had that before them, didn't you?

A. Yes.

(Testimony of James B. Lawton.)

Q. At the time of the investigation?

A. Yes.

Q. And you knew——

A. (Interposing) Yes.

Q. And you knew that that entry was false at that time?

A. The pilot had told them——

Q. (Interposing) Just answer that by yes or no. You knew that entry was false at the time that the Steamboat Inspectors had that log book before them and were examining you, didn't you?

A. Well, I would not call it false if they were using that method of navigating in Alaska for the last fifty years. Anybody knows that you don't mark down one-eighth and quarters of a point.

Q. Is it your usual practice to enter false entries in the log book—in the log book of the ship—entries which you know to be false in fact?

A. No, it is not.

Q. Then why did you do it on that occasion?

The Court: The Court will permit him to answer [2349] this question this time, but not again. He has answered that several times already.

Mr. Ryan: Yes, Your Honor.

A. I had asked the pilot if he wanted to enter the change of course in the log book and he said, "No, we will make a notation because we will probably have to haul the ship more to the right". He could not enter a course without knowing the effects of his current there. We might have hauled two

(Testimony of James B. Lawton.)

hundred times there and filled the book up with that watch.

Q. But notwithstanding that order from the pilot you went ahead and made entries anyway in the pilot book from that time on, didn't you?

A. Yes, sir.

Q. Why did you do that?

A. Because he told me to do that.

Q. You mean that you had still another conversation with him later on, is that right?

A. Well, I don't say what time.

Q. Well, when was that still other conversation that you are now mentioning?

A. Well, that is asking me a little bit too much.

Q. Was it after the stranding?

A. No, it was not.

Q. What?

A. No, sir, it was not.

Q. Was it in Mr. Murphy's office on Pier 2 in Seattle?

A. No; of course it was not.

Q. Well, where was it. Where did it take place—that still other conversation that you have now mentioned with [2350] Pilot Obert?

A. It took place on our watch during the time that the ship was running.

Q. Yes.

A. I don't remember talking to anybody after the ship was wrecked.

(Testimony of James B. Lawton.)

Q. Well, you testified on direct examination that the order that Pilot Obert gave you was, "Do not make any entries in the log book about the course, or these courses".

A. Yes, sir, I did.

Q. Now, you have testified that you went ahead anyway and did enter the courses in the log book. Now, you see the inconsistency between the two, don't you?

A. No, I don't.

Q. Then why did you disregard the Pilot Obert's orders and enter courses that you knew at the time to be false in fact?

A. You are wrong. I asked Captain Obert if he wanted to make a change in the course. Him saying, "No", naturally means to enter the same course.

Q. You testified on direct that what he told you was, "Wait a while".

A. Yes.

Q. "And afterwards we will make entries".

A. Yes.

Q. Now, you are testifying, as I understand you, that he said, "Go ahead and make entries". Now, which is true?

A. I had asked him several times that night when I compared compasses if he wanted to enter that "No change course" [2351] in the log book, and he said, "No", which means to put the old one down.

(Testimony of James B. Lawton.)

Q. Now, at the time that you testified before the United States Steamboat Inspectors didn't you know that it was a very important fact for them to know what course or heading the "Denali" was on at the time that she struck the reef?

A. Captain——

Q. (Interposing) Answer that by yes or no.

A. Captain Obert had——

Q. (Interposing) Will you answer that by yes or no, and then go on and explain it if you want to.

A. Well, yes, it is important.

Mr. Long: Now you can explain it, Mr. Lawton.

A. Captain Obert has been sailing to Alaska as a pilot for thirty years or so—I don't know the exact number of years—and it was my first trip with my license. Naturally the information that they wanted they got from Captain Obert, the pilot.

Q. They put you on the stand under oath, didn't they?

A. Yes, sir.

Q. As a witness?

A. Yes, sir.

Q. To tell the whole truth?

A. Yes, sir.

Q. And you just testified that the fact of the actual course or heading the "Denali" was on at the time that you struck the reef was one which should be called to the Steamboat Inspectors' attention. There is no doubt in your mind about that, is there? [2352]

(Testimony of James B. Lawton.)

A. I didn't know that it was not called to the attention of the Steamboat Inspectors. I still don't know it.

Q. You don't?

A. No.

Q. You didn't call it to their attention, did you?

A. No, I did not.

Q. Why not?

A. I had no reason to.

Q. You——

A. (Interposing) I just explained to you about that and my part in it. There was a man in charge of our watch who was an old timer, and we naturally took his word for everything.

Q. Now, the Steamboat Inspectors didn't ask you to tell them what you thought Pilot Obert might want to tell them. They asked you under oath what the fact was as to how the "Denali" was steering; what heading she was on, and you gave an answer, "Yes, sir". You didn't say, "I don't know", or, "Pilot Obert told me to say so", did you?

(Witness does not answer)

Q. You told them a fact which you knew was false, didn't you?

A. No, I did not.

Q. You did not, or you did?

A. I said that——

Q. (Interposing) What?

A. I said that my answer was incorrect.

Q. It was incorrect?

(Testimony of James B. Lawton.)

A. I didn't say false. I tried to explain that I must have [2353] misunderstood the Inspectors on that question.

Q. I see.

A. I did not read my testimony over, or I would have corrected it.

Q. I see. And you misunderstood the second time you were asked,

“Q. The pilot house compass is North $\frac{3}{4}$ West?

A. Yes”.

You misunderstood the question, is that right?

A. I don't remember that question.

Q. I see. Now, weren't you asked by the Steamboat Inspectors to give them any information that you had that might be important to them in connection with the investigation?

A. I might have been asked that.

Q. What did you answer when you were asked that question?

A. I don't know.

Q. Well, did you or did you not testify under oath on May 24, 1935, before the United States Steamboat Inspectors as follows, on page 14 of the official transcript,

“Q. Mr. Lawton, have you any information which you wish to give to the Board relative to this case?

A. No, sir, I have not”.

(Testimony of James B. Lawton.)

Did you or did you not so testify?

A. Yes, I did.

Q. What?

A. Yes, sir, I did.

Q. Well, why didn't you tell them the course that was being steered by the "Denali" at the time that you struck the [2354] reef while you were on watch as third mate on that ship?

A. I tried to tell you that Captain Obert was the officer in charge of our watch; that he was an old timer; that he was a good Alaska Pilot. What he didn't tell them, I am sure that I could not help the case any along.

Q. I see. Did Pilot Obert ever tell you to make a false entry in this log book with reference to the bearing that you personally took of the south end of Zayas Island, so that it would appear that the ship was somewhere other than where she actually was at that time? I call your attention to your entry, "2:37 A.M., May 19, 1935, south end Zayas Island abeam. Pilot house compass North $\frac{3}{4}$ West; bridge compass North $\frac{3}{4}$ West. Hazy". Claimants' Exhibit A-4—the pilot house log book—or the deck log book of the "Denali".

The Court: Will you read the question, please?

Mr. Long: I could not get the question either.

(Question read as follows:

"Did Pilot Obert ever tell you to make a false entry in this log book with reference to the bearing that you personally took of the

(Testimony of James B. Lawton.)

south end of Zayas Island, so that it would appear that the ship was somewhere other than where she actually was at that time?")

The Court: Now that is the question and the rest of that question is explanation. The question is what I want you to answer.

The Witness: Shall I answer the question?

The Court: Yes; answer the question.

A. No, sir, he never told me to do anything like that.

Q. (By Mr. Ryan) Did Captain Healy tell you to do it? [2355]

A. No, sir, he did not.

Q. Did anybody tell you to do it?

A. No.

Q. Now, when you testified before the United States Steamboat Inspectors you didn't tell them about this hauling to the right four times between Triple Island and the point of stranding on the reef that you have testified to here this morning, did you?

A. I don't recall telling them that.

Q. Why didn't you tell the Steamboat Inspectors that when you were under oath to tell the whole truth?

A. As I explained before the superior officer of our watch was an old timer, one of the best Alaska pilots on the run, and I was on my first trip with my license. I didn't have nothing to tell them.

(Testimony of James B. Lawton.)

Q. Did Pilot Obert tell you to falsify your testimony in giving it before the United States Steamboat Inspectors at Seattle?

A. No, sir; he certainly did not.

Q. Well, if he didn't why did you falsify your testimony before them?

A. I didn't do anything of that kind.

Mr. Long: Now, if Your Honor please, I object to that type of question and ask that it be stricken, unless it is pointed out by counsel wherein there is any false testimony here.

The Court: Objection overruled.

Mr. Ryan: What was the answer?

(Answer read as follows:

“I didn't do anything of that kind”.) [2356]

The Witness: I did not falsify before the Inspectors. I might have misunderstood a question. I was under quite a strain then myself, but I didn't think why, sir, if that is what you mean.

Q. I see. Now, again—you testified on still another occasion under oath to tell the whole truth before the United States Steamboat Inspectors, did you not—a second time you were called to the stand, isn't that right?

A. Yes.

Q. All right. Did you tell the United States Steamboat Inspectors at that time that the heading or course of the “Denali” at the time that she struck the reef was North $\frac{3}{4}$ East?

(Testimony of James B. Lawton.)

Mr. Long: I have to object to this form of examination. If Counsel wants to read the testimony and ask him if he testified to that, why, I have no objection to that.

The Court: That objection is overruled.

Mr. Long: Exception.

The Court: Exception allowed. Proceed.

A. Please read the question.

(Question read as follows:

“Did you tell the United States Steamboat Inspectors at that time that the heading or course of the ‘Denali’ at the time that she struck the reef was North $\frac{3}{4}$ East?”)

A. I cannot recall being asked that or telling them.

Q. Did you on that second occasion on which you testified, namely, at the trial on June 21, 1935, before the United States Steamboat Inspectors in Seattle, when you were [2357] called to testify as a witness—did you inform the Steamboat Inspectors of the fact that there had been four haulings or changes of the course to the right between Triple Island Light and the reef upon which the “Denali” stranded?

A. I cannot recall that I did, sir.

Q. Why didn't you?

A. As I stated before, Captain Obert knew all the details. He was an old timer, and then it is well known on that run. What did I have to tell that

(Testimony of James B. Lawton.)

he didn't know? It was my first trip with my license, you realize that, don't you?

Q. Well, you were being examined alone under oath before the Steamboat Inspectors, weren't you? You were on the stand by yourself at the time that you were asked about it?

A. Yes.

Q. Why didn't you tell the truth at that time?

Mr. Long: Now, I object to this form of examining. Call his attention to what you want him to testify to—what you want to ask him about.

The Court: Objection overruled. I will permit that question to stand.

The Witness: Did you ask a question?

Q. (By Mr. Ryan) Yes.

A. What was the question?

The Court: Read the question.

(Question read as follows:

“Why didn't you tell the truth at that time?”)

A. What do you mean, “the truth”? [2358]

Q. (By Mr. Ryan) As to what course or heading the “Denali” was steering at the time that she struck the reef, and as to the fact, to which you testified here today for the first time, that there were four changes of course or haulings to the right between Triple Island Light and the reef upon which the “Denali” stranded.

A. I naturally took it for granted that the In-

(Testimony of James B. Lawton.)

spectors knew all the details. I hadn't read over my testimony.

Q. I am referring now to the second occasion on which you were called as a witness under oath to tell the Inspectors the facts or details—what you knew about it to be the truth. I am asking you why—that second time you were called—more than a month later—a month later than the investigation, why didn't you tell them the truth on that occasion?

A. Well, I tried to answer their questions.

Mr. Long: If Your Honor please, I submit that that is an improper form of asking questions. Let counsel read the questions that are in the record.

The Court: Objection overruled.

A. I told you that I tried to answer all their questions, to the best of my ability.

Q. (By Mr. Ryan) Did you answer their questions according to what you knew to be the truth at the time that you gave it or not?

A. Why, certainly.

Q. Well, then, your testimony today is inconsistent with that, isn't it—obviously?

A. Why——

Mr. Long: (Interposing) I object to that unless [2359] he points out what it is inconsistent with.

The Court: Yes.

Mr. Long: I cannot even follow it.

(Testimony of James B. Lawton.)

The Court: Yes. You had better refer to each question.

Mr. Ryan: All right.

The Court: However, you have covered it pretty fully.

Mr. Ryan: Yes, I think I have.

The Court: As to those subjects mentioned.

Mr. Ryan: Yes, I have, Your Honor.

Q. (By Mr. Ryan) When the Steamboat Inspectors asked you on this second occasion, at the trial on June 21, 1935, what changes of course there were between Triple Island Light and the time that the "Denali" struck the reef on which she stranded, how many haulings to the right did you tell them about, if you told them any?

A. I don't recall.

Q. Did you tell them about any?

A. I tried to answer their questions.

Q. Was your memory better then than it is today?

A. No.

Q. All right. Well, now, at this time in June—on June 21, 1935, before the United States Steamboat Inspectors at Seattle, did you or did you not testify under oath as follows—

Mr. Long: (Interposing) What page?

Mr. Ryan: Page 7.

Mr. Long: Are you referring now to the trial of Captain Obert? [2360]

(Testimony of James B. Lawton.)

Mr. Ryan: There is only one trial. This is entitled "Trial".

The Court: Yes.

Mr. Long: The trial of Captain Obert?

Mr. Ryan: Yes, on page 7.

Q. (By Mr. Ryan) Did you or did you not testify under oath as follows,

"Q. Do you remember what course you were steering when Tripe Island Light was abeam; when you changed the course was it North $\frac{3}{4}$ West?

A. Yes, sir.

Q. And after you put the ship on North $\frac{3}{4}$ West, did you change the course any time before the vessel struck?

A. I hauled her to the right a little.

Q. How much—"

The Court: (Interposing) I think it would be better if you would divide that, Mr. Ryan.

Mr. Ryan: Yes, I see.

Q. (By Mr. Ryan) Did you or did you not so testify?

A. That answer—

Q. Did you or did you not—answer yes or no, please.

A. No, I did not. I did not haul the ship. There was a pilot aboard to do that. That is an error in writing, or something. I don't know who makes them.

Q. Well, excepting for the word "I" did you or did you not so testify?

(Testimony of James B. Lawton.)

A. I don't recall that.

Q. Do you deny that you so testified? [2361]

A. I know that I didn't testify that I hauled the ship to the right.

Q. Well, did you testify that anybody else hauled the ship to the right a little, in answer to a question reading this way,

“Q. And after you put the ship on North $\frac{3}{4}$ West did you change the course any time before the vessel struck?”

A. My answer is there. I guess I did. I don't remember the particular question.

Q. You don't deny that you did answer——

A. (Interposing) No, I don't deny that.

Q. (Continuing)——as I read it to you, is that right?

A. Well, you read it to me as “I”.

Q. You don't deny that you answered as I have read it to you, but substituting the word “he” for “I,” is that right?

A. If you substitute one word, why can't you substitute six or seven more? I don't know what you are looking at there.

Q. What I am trying to find out is whether you deny that you testified under oath before the Steamboat Inspectors here in Seattle on June 21, 1935, on the second occasion on which you were a witness before them as follows,

(Testimony of James B. Lawton.)

“ Do you remember what course you were steering when Triple Island Light was abeam? When you changed the course, was it North $\frac{3}{4}$ West?

A. Yes, sir.

Q. After you put the ship on North $\frac{3}{4}$ West [2362] did you change the course any time before the vessel struck?

A. I hauled her to the right a little”.

Did you or did you not so testify?

A. I never hauled that ship at any time.

The Court: No, that is not the question. Did you testify as he has read it to you there, did you so testify at the former trial?

The Witness: Well, I don't remember that exact testimony.

Q. (By Mr. Ryan) Well, then, you deny it, is that right?

A. No, I don't deny it.

The Court: Very well.

Mr. Ryan: All right.

Q. (By Mr. Ryan) Now, did you further testify at that time,

“Q. How much? Wasn't it north?

A. I think it was.

Q. How long did she stay on that course north——about fifteen minutes?

A. Something like that; fifteen or twenty minutes”.

(Testimony of James B. Lawton.)

Did you or did you not so testify?

(Witness does not answer)

The Court: Speak up, please.

The Witness: Well, I recall something like that, but I cannot remember that word for word—not those questions.

Q. (By Mr. Ryan) Do you deny that you so testified?

A. No, I don't deny it.

Q. You never mentioned to the Steamboat Inspectors any other [2363] hauling to the right than the one that I have mentioned, did you, namely, hauling to the course North for about fifteen minutes, or fifteen or twenty minutes, did you?

A. I tried to answer their questions.

Q. But you never mentioned any other hauling to the right, did you?

A. Not that I recall.

Q. And you never mentioned to them that you hauled over to North $\frac{3}{4}$ East at any time, did you?

A. Not that I recall.

Q. Now, when you first sighted Zayas Island, how did it bear?

A. She bore ahead a little bit on the port bow.

The Court. At this time we will take a ten minute recess.

(Recess) [2364]

(Testimony of James B. Lawton.)

The Court: You may proceed.

Q. (By Mr. Ryan) In order to refresh your memory, isn't it a fact that the Steamboat Inspectors showed you this pilot house log book, Claimants' Exhibit A-5 and showed you these entries here at 2:37 and 2:44, on May 19, 1935 (showing document to witness), and then asked you, after showing you your own log book entry, to tell them under oath what course the "Denali" was on at the time—what course the "Denali" was steering at the time she struck the reef.

Mr. Long: What page of the record?

The Witness: They never asked me any such thing as that.

Mr. Ryan: It is page 13.

Q. (By Mr. Ryan) What?

A. No; they didn't ask me that.

Mr. Long: Page 13 of the transcript of the trial of Capt. Obert, or the investigation?

Q. (By Mr. Ryan) Did you or did you not on May 24, 1935, before the United States Steamboat Inspectors, in Seattle, at their investigation, testify as follows, at page 13 of the official transcript:

"Q. Is this your writing (designating)?

A. Yes, sir; that is my writing.

Q. When the vessel struck it was steering North $\frac{3}{4}$ West?

A. Yes, sir."

Did you or did you not so testify?

A. I do not remember giving that answer, but if I gave that answer it is incorrect. [2365]

(Testimony of James B. Lawton.)

Q. Do you remember the Steamboat Inspectors, before they asked the question, immediately before they asked it, handing you that deck log book, Claimants' Exhibit A-4, which you now have in your hand, and asking you first, "Is that your handwriting?" Referring to those entries, 2:37 and 2:44, on May 19, 1935?

Mr. Long: If Your Honor please, there is no reference to what entries they are referring to.

The Court: The objection is overruled. He has the right to ask him the question. Answer the question, if you can. Proceed.

The Witness: Please read that. (Last question read.) I recall something like that.

Q. (By Mr. Ryan) Well, you knew at that time those entries made by you were false, in fact, didn't you?

Mr. Long: That is objected to as repetition. Counsel has asked that many times.

Mr. Ryan: I am trying to refresh his recollection.

The Court: The objection is sustained. Proceed to another question and subject matter.

Q. Now, you testified just before recess that when you first sighted Zayas Island it was ahead of you, is that right?

A. It was ahead and on the port bow.

Q. Which was it, ahead or on the port bow?

A. The head of the ship was pointing to the inside, eastern shore of Zayas Island, but the island was on the port bow.

(Testimony of James B. Lawton.)

Q. But the heading of the ship—it was heading towards the island, and if it continued right ahead it would hit the [2366] island, is that right, Zayas Island, at the time you first sighted it?

A. I cannot say that. I do not know how the tide would affect it.

Q. What do you say?—If the “Denali” had continued on the heading or course she was steering at the time you first sighted Zayas Island, would the “Denali” have hit Zayas Island or not?

A. No; the tide would have set her five or six miles, at least, to the West of Zayas Island.

Q. Oh, I see. So that Zayas Island was on the starboard, is that right?

A. No; it was not. I said that Zayas Island was ahead and on the port bow.

Q. What do you mean by that?

The Court: He has already explained that.

Mr. Ryan: I am asking him to be more specific.

The Court: Proceed. Ask him another question. He has already answered that one.

Mr. Ryan: All right.

Q. (By Mr. Ryan) Did you or did you not testify on June 21, 1925, before the United States Steamboat Inspectors, at Seattle, at the trial, as follows:

“Q. Did you see this land before the vessel struck Zayas Island?

A. Yes, sir.

Q. How did it bear?

A. It was on the port bow, sir.”

(Testimony of James B. Lawton.)

Did you or did you not so testify?

A. Yes; I believe I did. [2367]

Q. Well, on the port bow was exactly where it should have been if your course was correct, to go through Caamano Passage, wasn't it?

A. Not where she was at.

Q. If the current had not affected the "Denali" at all, so far as her course to be made good was concerned, down the mid-channel, Zayas Island would be on the port bow when you sighted it, wouldn't it?

A. Yes. We expected to pick it up on the port bow.

Q. Certainly. So that when you first sighted Zayas Island, and you saw it on the port bow, there was nothing to indicate to you that you were not on the very course you were intending to make, was there?

A. Yes, there was.

Q. There was?—State why there was, if Zayas Island was then on the port bow.

A. She was on the port bow, but too close to our ship's head.

Q. How close was Zayas Island to the ship's head?

A. I told you that the ship's head was practically in line with the eastern shore of Zayas Island. The rest of the island was on the port bow.

Q. You never mentioned that to the Steamboat Inspectors at either time you testified, did you?

A. I answered their questions.

(Testimony of James B. Lawton.)

Q. All you told them was that Zayas Island was on the port bow when you sighted it, isn't that right?

A. Yes.

Q. And that is where she should have been if you were making good the course you intended to make good at that time, [2368] isn't that so?

A. No; she should not have been right ahead.

Q. Did you ever before the time the "Denali" stranded have any doubt of the ship's actual position, where she was?

A. Are you asking me that question?

Q. Yes.

A. We knew approximately where she was at.

Q. Did you have any doubt of it at all, that you knew where the ship actually was at any time before the stranding occurred?

A. We didn't know exactly where we were at, which is impossible to know, with a strong current hitting the ship.

Q. Do you mean to say there was doubt in your mind with respect to where the "Denali" was before she actually stranded, that you had a doubt about it?

A. We had no doubt, no.

Q. You were *absolutely of* where the ship was at all times, were you, until she actually struck?

A. Not at all times, no.

Q. You were not?

A. No.

(Testimony of James B. Lawton.)

Q. Did it seem unsafe to you at any time before the ship actually stranded?

A. No; it did not.

Q. If you had had any doubt of the ship's position at any time before the stranding what would you have done?

A. Why, I would have done several things; I would have stopped the ship, or called the captain; or if I had any doubt I would have told the pilot.

Q. Was there any doubt in your mind that it was perfectly [2369] safe at all times, until the stranding actually occurred, for the ship to continue ahead at full speed ahead?

Mr. Long: May I have that question? I didn't get the first part of it. (Last question read.)

A. No; there wasn't any doubt in my mind.

Q. The first uncertainty that occurred was right after the stranding, right at the moment of striking the reef, isn't that so, so far as you were concerned?

A. Well, the first was when we actually hit the reef.

Q. Yes, when you actually hit the reef; the first time any doubt or uncertainty arose in your mind at all?

A. The ship appeared to us to be right in the middle of the Passage, and we thought we were all clear. We had no reasons to think otherwise.

Q. All right. Was or was not Pilot Obert on the bridge of the "Denali" in an advisory capacity to you as the third made on watch?

(Testimony of James B. Lawton.)

A. He was on the bridge as the pilot, as a licensed member of the crew.

Q. Answer the question, please, yes or no.

A. And on our certain watch he was in full charge.

Q. He was not in an advisory capacity to you, is that right?

A. I do not quite understand the meaning of your question.

Q. Now, this stranding occurred in British Columbia territorial waters, didn't it?

A. Yes; it did.

Q. And Pilot Obert is not licensed as a pilot in British Columbia territorial waters, is he?

A. They do not require any pilot's license in British Columbia waters. [2370]

Q. Answer that question yes or no.

A. We do not have any license, so we couldn't have.

Q. He has not any license, has he?

A. They do not issue them for those waters.

Q. And you knew he had no license for those waters, didn't you, British Columbia territorial waters, as a pilot?

A. Yes. If they do not have no license for those waters—I knew he didn't have any.

Q. Did you or did you not testify before the United States Steamboat Inspectors, on June 21, 1935, at the trial, as follows, page 9?

“Q. He was pilot?

A. Yes, sir.

(Testimony of James B. Lawton.)

Q. Where are these waters; are they in British Columbia?

A. Yes, sir.

Q. You know that a pilot of Southeastern Alaska has no jurisdiction in British Columbia?

A. Yes, sir.

Q. Then he was only on that bridge with you in an advisory capacity?

A. Yes, sir.

Q. You seem to have a great deal of responsibility in this matter, too.

A. Yes, sir."

Did you or did you not so testify under oath?

A. Yes; I believe I did.

Q. Did Pilot Obert keep you informed, and discuss with you the course that he was going to steer, and was steering?

A. We discussed most things concerning our watch, from time [2371] to time.

Q. Answer that question yes or no, then explain it, if you wish.

A. Will you please read that again? (Last question and answer read.)

The Court: The Court rules that is a sufficient answer. Ask him another question.

Mr. Ryan: All right.

Q. (By Mr. Ryan) When the stranding occurred what was the visibility?

A. All around the horizon, do you mean?—Back of the ship?

(Testimony of James B. Lawton.)

Q. Just give us the visibility at the time of the stranding, as you observed it.

A. At the time of the stranding, or shortly before, I saw Tree Point Light, which is 14 or 15 miles away. Zayas Island had a line of mist along the beach, and the edges of the trees; and the south end of Dundas Island had a long haze hanging on it. The visibility ahead was good. I didn't pay much attention to the visibility astern at the time.

Q. How was the visibility at the time of stranding, right ahead?

A. The visibility right ahead was good.

Q. Did you or did you not testify on May 24, 1935, under oath, before the United States Steamboat Inspectors, at the investigation of this stranding, as follows:

“Q. When this accident happened, what was the visibility?

A. The visibility was good in some spots, and not quite so good in others.

Q. How was it right ahead? [2372]

A. Hazy on both sides.”

Did you or did you not so testify, under oath?

A. I believe there is a slight mistake in that.

Q. Did you or did you not so testify?

A. Well, read the question again, please. (Question read.) I do not believe I said anything there about the visibility right ahead. I said it was hazy

(Testimony of James B. Lawton.)

on both sides, which I tried to describe a moment ago to you.

Q. You deny, then, that you testified as I have read it to you?

A. No; I do not deny it.

Q. Well, the question that was asked you was:

“Q. How was it right ahead?”

A. Hazy on both sides.”

Did you or did you not so testify on May 24, 1935, before the Steamboat Inspectors, when you were under oath?

A. I cannot remember making that exact statement.

Q. If you did so testify was that true or false, in fact?

A. It was true that there was haze on both beaches.

Q. Will you answer the question yes or no.

Mr. Long: I submit, Your Honor, the witness has answered to the best of his ability.

The Court: No; the objection is overruled.

A. Please read it again. (Question read). The question was, how was the visibility right ahead?

Q. Yes; and your answer was “Hazy on both sides.” Did you or did you not so testify under oath on May 24, 1935, before the United States Steamboat Inspectors?

A. I am quite sure I testified there was haze on both sides, on Zayas Island on one side and Dundas Island on the [2373] other side.

(Testimony of James B. Lawton.)

Q. You deny, then, that you testified that there was haze on both sides, in answer to that question as to how the visibility was right ahead of you?

A. No; I do not deny that.

Q. After you arrived back here in Seattle, after the stranding, did you have any conversation with anyone with reference to the circumstances of this stranding, before you went up to this investigation on May 24, 1935?

Mr. Long: I object to that as being repetition. The witness went all over that at the beginning of this examination.

The Court: The objection is sustained.

Mr. Ryan: All right.

Q. (By Mr. Ryan) Now, this investigation was on May 24, 1935, at which you testified, wasn't it, before the Steamboat Inspectors?

A. I do not remember the date.

Q. Didn't you on May 23, 1935, in company with Capt. Healy, prepare a statement of the circumstances of this stranding, and swear to it before a Notary Public?

A. I do not remember of that incident.

Q. Did you sign the protest that was extended under oath by Capt. Healy, with reference to this stranding on May 23, 1935?

A. The protest?

Q. Yes.

A. I do not recall of ever hearing of any protest.

(Testimony of James B. Lawton.)

Q. You did not sign the protest?

A. I cannot recall that I did. [2374]

Q. Do you deny that you did sign it?

A. I don't remember.

Mr. Ryan: Is the Notary Public in court? He was here a few minutes ago.

Mr. Long: Produce your original protest and see if his signature is on it.

Mr. Ryan: You have the original protest, or your agent has it. His signature is on it, I will tell you that right now.

Mr. Long: I do not know. I have not seen it.

Q. (By Mr. Ryan) Do you deny you signed the written protest on May 23, 1935, in company with Capt. Healy, of the "Denali", with reference to this stranding, here in Seattle?

A. Explain the protest, please.

Q. It is a statement under oath of the circumstances of the stranding, signed by the captain, and I am informed, by yourself.

Mr. Long: I demand that it be produced so that we can see if there is any inconsistency in it. I do not know if there is any inconsistency.

The Witness: I would like to look at it.

The Court: The record will show the demand, and the witness may answer, if he can.

The Witness: I would rather see the statement before I answer.

Q. (By Mr. Ryan) Did you make any statement on May 23, 1935, before any Notary Public, under oath?

(Testimony of James B. Lawton.)

A. I do not recall right now whether I did or not. I don't remember. [2375]

Q. You do not deny that you did?

A. I say that I do not recall.

Mr. Long: If Your Honor please, I object to this.

The Court: Very well. Proceed.

Mr. Ryan: I want to lay a foundation for impeaching the witness.

Q. (By Mr. Ryan) What allowance was made for deviation, if any, in setting the course from the fix off Triple Island Light, up through Caamano Passage?

A. There was no allowance at all made for deviation.

Q. What deviation was there on the compasses of the "Denali" on a heading of North $\frac{3}{4}$ West, if you know?

A. Well, I don't know exactly, but it was less than a degree.

Q. You never ascertained that yourself, did you?

A. I had the book right there; I could look at it any time I wanted to, as all of us did.

Q. But you never ascertained it yourself, did you, what the deviation was?

A. You mean look and see?

Q. Yes; take an azimuth, or anything like that.

A. Oh, yes, I did.

(Testimony of James B. Lawton.)

Q. What?

A. Yes, I did.

Q. On a course of North $\frac{3}{4}$ West?

A. Oh, I didn't say that. I said I took an azimuth.

Q. But not on that heading, ever, did you?

A. I don't recall which heading it was on.

Q. Well, the ship was never on that heading from the time she left Seattle until she got to the point of stranding, [2376] so far as you know of your own knowledge, was she?

A. I don't know whether she was on that heading.

Q. Or anywhere near that heading, so far as you know, of your own knowledge?

A. Not on my particular watch.

Q. What allowance was made for tide or current, or anything else, in setting the course from the fix off Triple Island Light, up through Caamano Passage, on the night of the stranding?

The Court: If you know.

Q. If you know.

A. $\frac{3}{8}$ of a point.

Q. What was that allowance for?

A. Current.

Q. What force and direction of current did you expect in setting that course?

A. The current and tides in that general vicinity—

(Testimony of James B. Lawton.)

Q. (Interposing) No; what did you expect there?

Mr. Long: Let him answer the question. He was about to get to it.

The Witness: The current and tides in that general vicinity are not to be depended on. The mariners and pilots going to Alaska know that.

Q. Now, read the question; and I will ask you to answer it. (Question read as follows:

“Q. What force and direction of current did you expect in setting that course?”

The Court: What particular course, etc.?

The Witness: Well, I did not set the course, Your Honor. The pilot was navigating the ship. I couldn't say. [2377] He had no data that he truly relied on to get the exact force of the tide.

The Court: Ask him another question.

Q. (By Mr. Ryan) You made no effort to ascertain what the force or direction of the tide or current was in Caamano Passage, between Triple Island and the reef that you knew you would encounter on setting the course from the fix off Triple Island up through Caamano Passage, is that right?

A. Well, they had the high tide for——

Q. (Interposing) Answer yes or no, and then explain, in each instance.

A. Please read that again.

The Court: Hereafter, you keep your mind on

(Testimony of James B. Lawton.)

the question asked, and let other present appropriately take care of the objections, etc.

The Witness: All right. (Question read.)
No; I did not make any. The pilot was navigating the ship, not me.

Q. (By Mr. Ryan) Do you know what force and direction of tide or current was reasonably to be expected by a navigator setting a course from the fix off Triple Island that you had, up through Caamano Passage, on that night of the stranding?

A. We had no——

The Court: No, this is a question of what you knew as to what to expect with reference to that subject at that time—answer yes or no.

The Witness: I didn't quite get that question.

The Court: All right; read the question. (Question [2378] read.)

The Witness: No; I didn't know.

Q. (By Mr. Ryan) Do you know it now?

A. No. Nobody else does, neither.

The Court: Ask him another question.

Q. Do you know what force and direction of current are shown on the United States Government and British Admiralty charts in that area, between Triple Island Light and Caamano Passage?

A. Yes; I have looked at the charts; looked at the arrows on the charts.

Q. When did you look at the arrows on the charts for the first time?

A. That night, you mean?

(Testimony of James B. Lawton.)

Q. Any time. When did you first look at them on that particular chart that you were using?

A. Oh, I cannot recall when I first looked at them.

Q. Did you look at them on that night?

A. Yes; I did.

Q. Did you figure out from the current diagram on that chart what the force and direction of the tidal current was that should be expected by a mariner navigating a ship from that fix off Triple Island, up through Caamano Passage, on that night?

A. No; I did not.

Q. Why didn't you?

A. Because the force of the current in those waters is not known.

Mr. Long: I did not get that last answer. (Answer read.) [2379]

Q. How about the direction of the current in those waters?

The Court: Speak up promptly.

A. It cannot be relied on.

Q. Do you know whether the pilot in allowing for current, for tidal current, to be expected on setting that course from the fix off Triple Island, up through Caamano Passage made the allowance which is stated on the chart in the form of the arrows and current diagrams?

A. I do not know.

Q. Do you know from what source was obtained the information for the navigating officer with re-

(Testimony of James B. Lawton.)

spect to expected force and direction of tidal current that would be encountered on sailing from that fix off Triple Island, up through Caamano Passage, on the night of the stranding?

The Court: I will ask the reporter to read that question. I think there was a word omitted from it. (Last question read.)

The Court: The reporter may insert in the question, after the words "obtained the information"—insert the words "for the navigating officer"—I think that will make the question complete.

A. Through local knowledge.

Q. You know that that was the source that he was taking it from?

A. Mostly.

Q. How do you know he was taking it from that source?

A. Because we had talked about the tide on the watch.

Q. Oh, you did?— All right. What did you say to Pilot Obert about the tide on that watch?

A. Well, the pilot said he was going to allow so much for the [2380] tide, which he did. Naturally, I knew that he was using his own local knowledge of those waters for the current and tide effects, and the direction.

Q. What allowance did he tell you he was making for expected force and direction of tidal current on that night, from Triple Island up

(Testimony of James B. Lawton.)

through Caamano Passage, on the night of the stranding?

A. I don't remember just what he said.

Q. Give us your best recollection.

A. Evidently $\frac{3}{8}$ of a point.

Q. Do you know what is meant by force and direction of tidal current?

A. Yes, sir.

Q. Didn't he mention the force and direction of tidal current in those waters?

A. He mentioned that on that tide there was a large run-out, which would affect a ship going through those waters, more than a smaller run-out.

Q. What tide was the ship on, on setting that fix off Triple island, preparatory to going up through Caamano Passage?

A. Well, it was on a flood tide, by a reference station that was quite a few miles away from the position that we were in.

Q. What was the tide at the place where the "Denali" was on arriving at that fix off Triple Island Light?

A. What was the tide?

Q. Yes, at that time, right where the ship was.

A. You mean according to the tide books?

Q. Actually what it was, if you know.

A. I cannot recall that. [2381]

Q. Do you know what it was according to the tide books?

A. Yes.

(Testimony of James B. Lawton.)

Q. What was it, when the "Denali" was at the fix off Triple Island—when it had reached that point?

A. It was at flood tide.

Q. At flood tide?

A. According to a reference station at a place quite a few miles away, but that didn't necessarily mean right where we were at.

Q. Do you mean to say that in your opinion the tide tables are wrong?

A. No; I do not say that.

Q. What was the time of high water at Barren Island that night?

A. I cannot recall that.

Q. Did you ever make any effort to ascertain it?

A. I cannot recall that, either.

Q. On what do you base your opinion that the current diagrams that are on the United States Government, and Canadian Government large scale charts, and the tidal current arrows for flood and ebb tide, and the hourly statements of direction and force, throughout the whole 24 hours, are wrong?

A. Part of the year, some season of the year, the tides most likely run as predicted on the charts, but at other times of the year they are not reliable.

The Court: Counsel wanted to know what the source of the information is; how did you find out?

The Witness: I found it out by associating with many men that have sailed up through that passage

(Testimony of James B. Lawton.)

for years—half their life—it is a well known fact on that part of the run. [2382]

Q. This was your first trip as an officer on a ship, wasn't it—on this ship which stranded?

A. Yes, sir.

Q. So that your information is just based on hearsay, isn't it?

Mr. Long: If Your Honor please, I submit that the witness has answered the question fully as to where he had that information.

The Court: That objection is overruled.

A. Well, I have made several hundred trips to Alaska.

Q. (By Mr. Ryan) Well, give me the name of the ship and the date on which you last went through Caamano Passage before this stranding on May 19, 1935, of the "Denali".

A. I cannot do that. I have been on lots of ships. I have been on most of the Alaska Steamship Line ships. I don't recall the exact or specific ships.

Q. How many years prior to this stranding, on May 19, 1935, was it that you were last on a ship which went through Caamano Passage?

A. I cannot even recall that. It may have been the summer before or maybe it was the summer before that.

Q. Can you give me the name of the ship that you were on that you last went through there before the time of the stranding?

A. No, I cannot.

(Testimony of James B. Lawton.)

Q. Now, you have testified that Pilot Obert got this information about expected tidal currents from local knowledge. That is right, isn't it?

A. Why, yes. [2383]

Q. Now, as a matter of fact, wasn't Pilot Obert looking at the American and Canadian tide tables and making computations from then at the time of setting the course of this vessel from this fix off Triple Island Light up through Caamano Passage?

A. Well, if he did it, I didn't notice him doing it.

Q. All right. You did not?

A. No.

Q. All right. Did you or did you not testify before the United States Steamboat Inspectors at the trial on June 21, 1935, at Seattle, as follows:

“Q. When you were on watch”—that is at page 7,—

“Q. When you were on watch did Mr. Obert mention anything about tide tables or tides?

A. Yes, sir.

Q. What did he say?

A. American tide and Canadian tide.

Q. Did you see him go to the chart table and do anything, figuring or calculating?

A. Yes, sir.

Q. Do you know what he was doing?

A. Checking up”.

Did you or did you not so testify?

(Witness does not answer)

(Testimony of James B. Lawton.)

The Court: Say whether you did or whether you did not, if you recall.

A. Yes, I believe I did testify to that.

The Court: Ask him another question. [2384]

Mr. Ryan: All right.

Q. (By Mr. Ryan) Did you or did you not testify on June 21—I will strike that out. Have you ever read the tide tables about Caamano Passage?

Mr. Long: The tide table?

Mr. Ryan: Yes.

A. Yes, I have.

Q. (By Mr. Ryan) When did you read them for the first time?

A. Well, that is something that I cannot recall.

Q. Well, give us your best recollection.

A. Well, I cannot even do that.

Q. Had you ever read them before, say, July, 1935?

A. Yes.

Q. The tide tables about Caamano Passage?

A. I don't know particularly about Caamano Passage, but I have read the tide tables before that.

Q. Do you know what it said in the tide tables about the tides that are to be expected in the vicinity of Caamano Passage?

A. As I recall, I recall reading something.

Q. What did the tide tables say?

A. Oh, I don't recall just what they said. If you will look at page 72 of the Canadian Tide Tables, you can see.

(Testimony of James B. Lawton.)

Q. But whatever they say, say right or wrong, which was it?

Mr. Long: I submit the witness says that he does not remember what it said. Show him the table.

The Court: Well, the objection is overruled.

Mr. Long: That is a very unfair way of cross examining.

The Court: If you know you can answer that question. [2385]

A. Will you read it again?

The Court: Read it.

(Question read as follows: "But whatever they say, say right or wrong, which was it?")

Q. (By Mr. Ryan) Which was it, right or wrong, what those tide tables say about Caamano Passage and the waters in the vicinity of Caamano Passage?

(Witness does not answer)

The Court: Answer the question.

A. I cannot answer the question.

Q. (By Mr. Ryan) Did you hear this conversation on the bridge between Pilot Obert and the second mate about midnight of the night of the stranding with respect to Triple Island Light?

A. I don't recall that I did, no.

Q. You don't recall any such conversation, is that right?

A. No, I don't.

(Testimony of James B. Lawton.)

Q. Well, you were on watch at the same time or just before—you went on watch at the same time or just before Obert did, didn't you?

A. Practically the same time, I guess.

Q. Was the second mate there?

A. Yes, sir.

Q. And you relieved him?

A. Yes.

Q. And what did the second mate tell you at that time? Give us the substance of everything that he said, and everything that you said to him.

A. Well, he explained—he showed me Triple Island Light, which was forward of the beam a little, and he told me [2386] that he had taken a four point bearing and taken a log, and noted the time, and Triple Island Light was four points, and he showed me where he had entered it in the log book.

Q. Is that all that he said?

A. No. We went in and looked—I looked at the large scale chart of Caamano Passage. That is about all that I recall that he said.

Q. Did he tell you what force and direction of current he had allowed in setting the course on which the ship was at 10:49, and on which he was continuing at the time that you went on watch?

A. No, he did not.

Q. Did you ask him?

A. No, I don't recall that I asked him.

(Testimony of James B. Lawton.)

Q. Did the second officer tell you what deviation, if any, had been allowed for in setting that course on which the ship was steering at the time that you went on watch?

A. No, I don't recall that.

Q. Did you ask him?

A. No, I did not.

Q. Now, when you take a bow and beam bearing on a ship, what is the usual practice in making entries in the log book? How do you enter that? Just tell us how you make any entry with reference to any bow and beam bearing.

A. How I make an entry with reference to a bow and beam bearing in the log book?

Q. Yes. [2387]

A. You mean a four point bearing entered in the log, too?

Q. Yes. What was the usual practice on the "Denali"?

A. Well, we take a Hanson bearing board——

Q. (Interposing) I don't meant how you take it, but what bearing do you make in the log book under the usual practice or what entry is made in the log book under the usual practice on the Alaska Steamship vessels?

A. They enter it differently. They enter it in the deck log book.

Q. Yes, in the deck log book, what entry is made when a four point bearing has been taken?

(Testimony of James B. Lawton.)

A. Well, when it is a four point bearing, we enter the time down in the log book; the course; and enter the log.

Q. Did you take a four point bearing from the time that the "Denali" left Seattle until she arrived at the point of stranding?

A. Yes, I did.

Q. I show you the log book and I will ask you to show me where you have made one of those entries with reference to a four point bearing.

A. I took one off of Cape Beal.

Q. You took one off of Cape Beal?

A. Yes, sir.

Q. That is this entry at 12:50 A. M. on May 17, 1935, is that right?

A. Yes, sir.

Q. Now, all that you entered there is this, isn't it, "12:50 A. M. Cape Beal; 6½ miles; time on course, 42 minutes; pilot house compass West 7/8 North; Bridge [2388] compass West 5/8 North; distance by log 132.7; tide, ebb; wind, west. Weather remarks, raining".

Is that right?

A. Yes, sir.

Q. Is that your total entry?

A. Yes, sir.

Q. You didn't make any entry of a bow bearing?

A. No, I did not.

(Testimony of James B. Lawton.)

Q. Can you show me any entry by you, or by any other officer on the ship of a bow bearing?

A. That is not necessary.

Q. (Continuing) In connection with a four point bearing.

A. It is not necessary to enter it in your log book.

Q. (Continuing) On that voyage.

A. It is not necessary to enter it in your log book.

Q. Well, will you show me one, if you can find it? And you might mention, as you go through, every point bearing that you see that you took, or that you know what taken on that voyage.

A. Well, I will have to start over again.

The Court: No, do not do that. You have been looking for it. Keep on from where you are.

Mr. Long: If Your Honor please, I think that counsel's question is that he go through the book and point out all of them. There are many of them in that book.

The Court: The main question was to pick out those that he entered.

The Witness: Four point bearings?

Q. (By Mr. Ryan) The bow part of a four point bearing. See [2389] if you can find any entry in there.

A. No, I cannot.

Q. It is not the usual practice to enter it, is it?

A. Sometimes we do and sometimes we don't.

United States
Circuit Court of Appeals

For the Ninth Circuit. *2*

PACIFIC COAST COAL COMPANY, a corporation, et al. Claimants,

Appellants,

vs.

ALASKA STEAMSHIP COMPANY, a corporation, Owner of the American Steamship DENALI,

Appellee.

UNITED STATES OF AMERICA,

Appellant,

vs.

ALASKA STEAMSHIP COMPANY, a corporation, Owner of the American Steamship DENALI,

Appellee.

Apostles on Appeals

In Twelve Volumes

VOLUME VI

Pages 2465 to 2968

FILED

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PAUL F. GIBBEN,
CLERK

Upon Appeals from the District Court of the United States for the Western District of Washington, Northern Division.

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Northern Division.

(Testimony of James B. Lawton.)

Q. Can you find any instance or any time that you ever did it?

A. No.

Q. Or that anybody else ever did it?

A. No.

The Court: You mean referring to this voyage?

Mr. Ryan: Yes.

Q. (By Mr. Ryan) Referring to this voyage.

A. No.

Q. Well, can you give me the name of any ship, and the date that it was ever entered on any other ship of the Alaska Steamship Company that you have ever been on?

Mr. Long: That is wholly immaterial.

A. On any of the Alaska steamships?

Q. Yes.

A. Well, on all the Alaska Steamship Company's ships.

Q. They enter the bow bearing as well as the beam bearing?

A. Yes, sir.

Q. Now, is this since the stranding or before the stranding?

A. Before the stranding.

Q. Were you the officer on watch?

A. No, I was not. You asked me if I could give you the name of any ship, and I say any ship engaged in the Alaska trade.

Q. But you never made any entry of a bow part of a four point bearing before this stranding occurred, did you? [2390]

(Testimony of James B. Lawton.)

A. I didn't say that I did, no.

Q. You were never an officer before that, were you?

A. No, I was not.

Q. Now, I call your attention to this unusual entry in the 6:00 P. M., May 18, 1935, to midnight watch.

Mr. Long: I object to the word "unusual."

Q. (By Mr. Ryan) In connection with the words "Triple Island"—

The Court: (Interposing) Objection overruled.

Q. (By Mr. Ryan, continuing) —in which the bow bearing is given, "10:45 P. M.; Triple Island, four points".

A. Yes.

Q. That is the only entry in that log book of the bow part of a four point bearing, isn't it?

A. That is all that I see.

Q. How do you account for the fact that that particular entry on that particular watch happens to be different from all other entries on the whole voyage with respect to four point bearings?

A. Well, it was a long watch and a long bearing, and it does not mean anything. You can just as well enter it on the scratch pad in the pilot house as to put it down in the book. It is a practice on all ships. Sometimes they enter four point bearings as well as beam bearings; and sometimes they do not.

(Testimony of James B. Lawton.)

Q. Now, after you once read the taffrail log, or whoever is doing it has read it——

A. (Interposing) Yes.

Q. (Continuing) There is no way of going back and checking on that to see what it was? The log keeps on going, [2391] doesn't it?

A. Yes; it keeps on going.

Q. So after it has been read once, that is the last time that it can be corrected, isn't it?

A. No. You can send a man right back.

Q. Yes.

A. If you see that he made a mistake of fifty miles, you send him right back.

Q. If he made a mistake of fifty miles?

A. Well, two miles, then.

Q. Well, it is like a watch, isn't it? That is, the hands keep going around like they do on a clock, as the ship keeps going ahead, isn't that right?

A. Yes, sir.

Q. So that when you read what the dial says and record it, and then go up on the bridge, there is no way to go back and find out whether—whether what you looked at was correct or not, excepting suppose the change was fifty miles or so, isn't that right?

A. No, it is not right. In certain instances you can do that. For instance, if a man reads a log, and reads it as twenty-five, and brings up the log to the bridge and reports thirty-five, the officer on watch would know that there was a mistake, and

(Testimony of James B. Lawton.)

he will send him back there and he will see that it was twenty-five that he read instead of thirty-five. That has happened lots of times.

Q. Now, you relieved the second mate on the night of the stranding, didn't you?

A. Yes, sir. [2392]

Q. Did he say anything to you about having found any errors in the taffrail log, or errors in the reading of the taffrail log on the watch which was just ending?

A. I don't recall that.

Q. Can you say positively that he did or did not?

Mr. Long: I submit that the witness has answered the question, Your Honor.

The Court: The objection is overruled.

(The witness does not answer)

Mr. Ryan: What was the answer to that question?

The Reporter: The witness did not answer the question.

Q. What was the answer or what is the answer to that question?

A. What is the question?

Mr. Ryan: Read the question.

(Question read as follows: "Can you say positively that he did or did not?")

A. I cannot say positively one way or the other.

(Testimony of James B. Lawton.)

Q. Now, you took this beam bearing of Triple Island Light at 12:06 A. M., did you not, May 19, 1935?

A. Yes, sir.

Q. And you worked out the distance to be 10.5 miles, did you not?

A. Yes, sir, I did.

Q. What allowance, if any, did you make for current in arriving at that conclusion, that the ship was 10.5 miles off, distant abeam from Triple Island Light at 12:06 A. M.?

A. I didn't make any allowance.

Q. Why didn't you?

A. Because the pilot on my watch is the navigator. [2393]

Q. But you were the one who took the bearing and you were the one who worked it out. Now, why didn't you make that allowance for current?

A. I told the miles that we were off by log. That is the best way that we have of estimating our miles off, by log.

Q. You cannot tell how many miles you are distant abeam from a light in taking a four mile bearing, unless you make an allowance for current, can you, and an allowance for deviation, if any?

A. If you run the same course between the four point bearing and a beam bearing, you naturally get your distance off by using your log.

Q. You don't have to make any allowance for current?

(Testimony of James B. Lawton.)

A. No.

Q. If any exists?

A. No.

Q. And you do not have to make any allowance for deviation, if any exists?

A. Oh, I don't say that.

Q. Is that right?

A. I don't say that. You are mixing the questions up a little bit.

Q. Now, suppose the current was setting the "Denali" toward the eastward after this bow bearing was taken at 10:45 P. M., then the distance run between 10:45 P. M. and 12:06 A. M., when you took the beam bearing, would not correctly show the distance abeam from Triple Island Light, would it?

A. Oh, I don't know. [2394]

Q. Do you understand the question clearly?

A. Yes, I believe I understand it.

Q. All right. Answer it.

A. Will you read it again, please?

(Question read as follows:

"Now, suppose the current was setting the 'Denali' toward the eastward after this bow bearing was taken at 10:45 P. M., then the distance run between 10:45 P. M., and 12:06 A. M., when you took the beam bearing, would not correctly show the distance abeam from Triple Island Light, would it?")

(Testimony of James B. Lawton.)

Q. (By Mr. Ryan) That is the distance abeam at 12:06 A. M.

A. It would show awfully close to the distance abeam.

Q. No matter what the current was that was setting her to the eastward, is that right?

A. Well, if there was any extraordinary long or strong current, they would allow for it.

Q. You didn't allow for it, did you?

A. I wasn't on watch.

Q. Well, you made the entry in the log book with reference to the distance abeam of Triple Island Light at 12:06 A. M. on May 19, didn't you?

A. Yes, sir.

Q. And you made it without any allowance for current in any direction, didn't you?

A. I didn't know that there was any allowance for current to be made——

Q. (Interposing) I see. Now——

Mr. Long: (Interposing) Let him answer the question, please. [2395]

Q. (By Mr. Ryan) In other words——

Mr. Long: (Interposing) Let him answer the question. It needs to be explained.

The Court: Just note your objection, and the Court will rule thereon.

Mr. Long: Very well, Your Honor.

The Court: Had you finished your answer?

The Witness: Yes.

(Testimony of James B. Lawton.)

The Court: Is there anything that you want to add to make your answer complete? If so, you may do so. Do so promptly, however.

The Witness: That is complete.

Q. (By Mr. Ryan) You were not expecting any current in that vicinity, were you, on that night of the stranding?

A. The other watch didn't tell us about any current there.

Q. And you were not expecting any on your watch?

Mr. Long: Now, when as to time? I object to the question unless the time is fixed.

Mr. Ryan: The time when he came on watch.

Mr. Long: Six minutes?

The Court: No, do not interrupt. Make your objection. Objection overruled. Proceed.

A. We run that course for six minutes, from 12:00 o'clock to 12:06, on our watch.

The Court: And then what? Answer the question. If that is the foundation for the answer to the question, follow it by your answer.

The Witness: And then we changed the course and went on another course.

The Court: Read the question to the witness.

[2396]

(Questions read and answer read as follows:

“Q. You were not expecting any current in that vicinity, were you, on that night of the stranding?

(Testimony of James B. Lawton.)

A. The other watch didn't tell us about any current there.

Q. And you were not expecting any on your watch?"')

The Court: What is the answer to that question? Just answer the question.

A. Yes, we were.

Q. (By Mr. Ryan) Then why didn't you make allowances for it?

A. We did make allowances for it.

Q. What allowances did you make?

A. I told you that the pilot made three-eighths of a point allowance.

Q. But you made no allowance for the run from 10:45 P. M. to 12:06 A. M., is that right?

Mr. Long: I object to that. It clearly appears that this man was not on watch then.

The Court: Objection overruled. It is what this man did, as I understand it.

Mr. Long: There would be no necessity for doing it if he was not on watch.

The Court: Objection overruled.

A. No, I made no allowance for that tide.

Q. (By Mr. Ryan) And you made no allowance for any deviation of any sort on the compasses?

Mr. Long: The same objection. [2397]

The Court: Objection overruled.

A. No. I was not on that course.

(Testimony of James B. Lawton.)

The Court: Now, at this point the proceedings in this case are adjourned until 10:00 o'clock tomorrow in the forenoon.

(Whereupon an adjournment was taken at 4:30 o'clock P. M., November 9, 1937, to 10:00 o'clock A. M., November 10, 1937.) [2398]

Wednesday, November 10, 1937

10:00 O'clock A. M.

The Court: You may proceed with the trial. Mr. Lawton, will you resume the stand.

JAMES B. LAWTON

resumed the stand for

Further Cross Examination.

By Mr. Ryan:

Q. Will you lay down on this chart a line through the reef, running North $\frac{3}{4}$ East, the way you say the "Denali" was heading at the time of the stranding. You can lay it down on this flat table, with instruments.

The Court: Refer to which chart it is, Mr. Ryan.

Mr. Ryan: I will ask that it be identified as Claimants' Exhibit A-11.

(Chart No. 2828 marked for identification Claimants' Exhibit A-11.)

The Court: You may step down, Mr. Lawton.

The Witness: What do you want me to do now?

Mr. Ryan: Read the question. (Question read.)

(Testimony of James B. Lawton.)

The Witness: You mean approximate, don't you?

Q. (By Mr. Ryan) As nearly accurate as you can make it, through the position where the "Denali" was on that reef.

A. Approximately like that. (Witness draws line on Claimants' Exhibit A-11 for Identification.)

Mr. Ryan: Let the record show that the witness draws a line.

Q. (By Mr. Ryan) Will you on this chart, Claimants' Exhibit [2399] A-11, Hydrographic Office Chart No. 2828, mark "A" at one end of that line and "B" at the other end.

A. How long do you want the line?

Q. You can make it a little longer than you have it there, in each direction.

A. (Witness extends line on chart.)

Q. Put "A" at one end and "B" at the other.

A. (Witness designates on chart.)

Q. Now, that doesn't look anything at all like mid-channel, does it, to anybody standing on that ship and looking ahead?

A. Yes; it certainly does. Your Honor, this end of the Island is covered with haze, and here is what we can see mostly looking in this direction, right through here (indicating on chart.) This was about the angle that we approached it.

Q. Now, that North $\frac{3}{4}$ East that you have laid down, what is that?

(Testimony of James B. Lawton.)

A. Magnetic. You forgot, too, Mr. Ryan, that I tried to tell you the air was deceiving that morning. That was another reason why we thought she was in mid-channel. Deceiving air means air that is hard to judge. In the early morning up in Alaska, or in the evening, most of the time we have deceiving air.

Q. Well, the fact is, taking that line as you have drawn it, the island on your left is less than 5/6 of a mile away from the line, away from the "Denali", isn't it, on the port side?

A. I don't know exactly. I will take your word for it.

Q. How far is it? Do not take my word. How far is it from [2400] that line to Zayas Island?

A. You mean the reef?

Q. Yes—no; that line that you have drawn there.

A. That goes over the reef.

Q. You can come down to this table again, with the instruments, and measure it.

Mr. Long: What is the question?

Mr. Ryan: May I ask opposing counsel—

The Court: Yes, Mr. Ryan, the Court permits you to look on and not be interfered with, and if necessary an opportunity will be given for redirect examination.

The Witness: Well, where we actually struck was on the outside of the reef, the furthestmost reef sticking out in the channel.

(Testimony of James B. Lawton.)

Q. (By Mr. Ryan) Will you measure the distance from the line that you have drawn to Zayas Island?

A. I told you that is an approximate line. That is 1/16 of a mile inside of—

Q. (Interposing) Now, please listen to the question and then do as you are directed. You are asked to tell us the distance from that line that you have drawn to Zayas Island.

A. How much did you say it was?

Q. I am asking you.

A. It is about three-quarters of a mile.

Q. What is the distance from that line to Dundas Island? Are you taking that distance from the reef where the "Denali" was, or somewhere else?

A. You just said not to take it—

Q. (Interposing) No; I didn't say anything of the sort. [2401]

A. Yes, you did.

Q. I am asking you to tell us the distance from that line to Dundas Island.

A. Well, that is just what I did, and you said this line here—that is what you mean, isn't it?

Q. The line that you have drawn there, yes; the distance from that line to Dundas Island.

A. It is two and three-quarters miles.

Q. All right. Now, you have just given that distance from the nearest part of Dundas Island to that line as projected up toward the north of Zayas Island, have you?

(Testimony of James B. Lawton.)

A. You just asked me——

Q. (Interposing) I mean that is what you have done. I just want the record to show it.

A. That is what you said to do.

Q. Now, tell us the distance from that reef at the point where you have indicated the "Denali" stranded to Dundas Island?

A. About three and three-eighths miles.

Mr. Ryan: I want the record to show that in making all these measurements the witness has used dividers and the parallel rulers.

Q. (By Mr. Ryan) Now, will you indicate on that chart where the "Denali" was at 1:30 a.m., May 19, 1935?

A. Do you want me to draw all the course lines out from the other courses, the other watch I was not on, and everything else, and work it up to that?

Q. I want you to indicate on that chart the point where the "Denali" was at 1:30 a.m. on May 19, 1935. You can do it in any way that you desire.

[2402]

A. As I told you before, I did not check the exact location of the ship at 1:30. I knew where she was heading, where we were heading on this edge of Zayas Island. We were approximately right in here. In a country like that you have tide running all around—how the heck are you supposed to know just where you are at? It is impossible. If you can get cross bearings on anything you can do it. I have told you ten times there were no cross

(Testimony of James B. Lawton.)

bearings of any kind taken, except what you could actually see on Zayas Island, and on Dundas Island.

Q. Do you mean by that answer that you cannot do as asked in the question? Read the question to him again. (Question read as follows:

“Q. I want you to indicate on that chart the point where the ‘Denali’ was at 1:30 a.m. on May 19, 1935. You can do it in any way that you desire.”)

A. Well, I do not need to figure. I can tell you as closely as I know, right in here (indicating).

Q. Will you mark that with an “X”, with a circle around it?

A. The way you do your navigating is terrible, all right. We use a little system about it.

Q. Use any system you desire, and use dividers, parallel rulers, and any other instruments you desire.

A. What do you want me to put, just a circle?

Q. Put a cross with a circle around it, the middle intersection of the cross marking the point.

A. I will put it there somewhere. (Witness draws circle on exhibit.)

Q. Write alongside that “Where ‘Denali’ was at 1:30 a.m. May 19.” [2403]

A. Approximately where she was?

Q. Yes. Is that only approximately, or is that exactly, the way you put it?

A. Haven’t I just told you we didn’t get cross bearings to get the exact location?

(Testimony of James B. Lawton.)

Q. All right; put it down there then, where the "Denali" was at approximately 1:30 a.m., May 19th.

A. (Witness indicates on exhibit) "Approximately 1:30 a.m."

Q. Put the word "Denali" just before "Approximately".

A. (Witness indicates on chart.)

Q. Now, where the "Denali" was is at the point marking the intersection of the two lines constituting the cross, is that right?

A. No, it is not right. I said approximately around in this circle, as close as I can get it.

Q. In other words, what you mean to say is the "Denali" was somewhere in that circle, and that is all you can say, is that correct?

A. That is my guess.

Q. In other words, you are indicating the point where the "Denali" was by an area, the entire area inside of that circle, is that right?

A. Possibly. It might be in any one of those places.

Q. Inside of that circle?

A. Yes.

Q. This line through this reef that you have drawn is what is called a line of position, isn't it?

A. Well, you can call it that, yes.

Q. That means the ship is somewhere on that line.

A. She hit that reef. [2404]

(Testimony of James B. Lawton.)

Q. All right. In view of the fact that you have made this so approximate down at this end we will have to work back from the reef. Now, indicate on this chart, Claimants' Exhibit 4-11, the track that the "Denali" followed while she was on this North $\frac{3}{4}$ East magnetic heading or course, before hitting the reef.

A. You give me the mileage all the time and I will try to lay that down. We were bucking an unknown amount of current; how do we know our mileage? You give it to me and I will mark it down.

Q. What was the speed over the ground of the "Denali"?

A. Well, we made around eight or nine.

Q. Will you lay down on this chart from that point that you have marked as the position of the "Denali" on that reef, her track while on the course North $\frac{3}{4}$ East, preceding the stranding?

A. Her track?

Q. Yes.

A. Well, you have got it right there (indicating on exhibit).

Q. All right. You are referring now to this line "A—B", is that right?

A. North $\frac{3}{4}$ East; isn't that what you want?

Q. Now indicate on that line the point at which the "Denali" first took that course North $\frac{3}{4}$ East.

A. Well, I will not indicate that unless you give

(Testimony of James B. Lawton.)

me the distance and speed she was making. You figure that out.

Q. She was making full speed ahead, wasn't she?

A. I told you——

Q. (Interposing) Answer the question now, and we will get along much better. [2405]

A. The engines were going full speed, but that is no sign the ship was making that speed through the water. I don't know that, and nobody in the world knows it. You figure that out.

Q. All right. Just for the purpose of getting this down in some intelligent shape, just please ignore currents, tidal current.

A. It won't be intelligent if you do that.

Q. Well, the Court will determine whether it is intelligent or not. Now, you please do that.

Mr. Long: I object to that, Your Honor. I object to this form of question.

The Court: Let the witness answer the question.

Mr. Long: I am trying to object to the previous question, but Mr. Ryan did not stop. I object to requiring this witness to lay something down that didn't happen. The testimony is that there was current.

The Court: The objection is overruled.

Mr. Long: That cannot be done, of course.

The Court: The question has assumed some things, and if the witness can answer, or can demonstrate his answer to the question, he will do so.

(Testimony of James B. Lawton.)

Q. (By Mr. Ryan) Ignoring tidal current of every sort, indicate on this chart the magnetic course North $\frac{3}{4}$ East of the "Denali" from the reef back to the point where she first assumed that course.

A. Where are all your navigation books?

Q. What book?

A. Bowditch.

Q. Who are the experts you have been working with? [2406]

A. Well, you have got all the books up here.

Q. Why do you need Bowditch for that purpose?

A. Well, I don't need it. I can do without it, if that is what you want.

Q. Don't you remember the times when you assumed these courses, and how long the "Denali" continued on them?

A. Sure, I do.

Q. Well, what is there in Bowditch about that?

A. Can't I find how many miles, in Bowditch, it takes a ship at nine miles an hour to make one mile? Haven't you ever read that?

Q. All right; if you want Bowditch we will get you our copy. You have been working with Capt. Kildahl and Mr. Farwell, and all these experts on the other side, haven't you?

Mr. Long: If Your Honor please, I ask that that remark be stricken.

The Court: Do you object to it?

Mr. Long: I certainly do object to it.

(Testimony of James B. Lawton.)

The Court: The objection is sustained. It is not material.

The Witness: Have you got a scratch pad?

The Court: There is nothing before the Court to be answered at this time.

Mr. Long: I make the further objection that unless counsel includes the amount of current that any course laid down would be obviously misleading and incorrect.

The Court: Mr. Long, the Court has already ruled.

Mr. Long: I want to be certain that Your Honor has my objection.

The Court: The ruling will stand. [2407]

Mr. Ryan: (Addressing the witness) Here is a pad and pencil. I have sent out to get a copy of Bowditch.

The Court: I think this witness should be given an opportunity to answer upon the conditions stated, if he can, and if he cannot I think he should so state, and then proceed. We cannot stop the case to refer to that.

The Witness: I cannot, Your Honor—it is impossible the way he asks me to put the ship—I can put it over in China, even—there was an unknown amount of current.

The Court: You will have to proceed. We cannot stop the case.

Mr. Ryan: If the Court please, may I ask this?

The Court: Yes.

(Testimony of James B. Lawton.)

Q. (By Mr. Ryan) You know the time when you assumed that course, don't you?

A. What course was that?

Q. The course that the "Denali" was on at the time she stranded?

A. Yes, sir; approximately.

Q. And you knew how long she continued on that course?

A. Approximately.

Q. Well, with just that knowledge can't you lay that down on the chart?

A. Yes; I can.

Q. Well, then, do it. Now, here is Bowditch, if you need that.

A. If you give me the distance I am going to use now——

The Court: No; proceed. If you can answer you may do so, or indicate it, if you can with your present knowledge, and if you cannot counsel will be directed to [2408] propound another question.

The Witness: Do you mean to use just eight miles, nine miles, or seven miles?

The Court: Whatever knowledge you have, if by the use of such knowledge as applied to the question propounded, under the conditions stated, if you can answer the question or demonstrate it on the chart, you may do so, and if you cannot do so you will say that you cannot and the Court will direct another question to be propounded.

(Testimony of James B. Lawton.)

Mr. Long: I suggest that the question be asked him, can he do it?

Mr. Summers: He has already answered that.

The Court: That suggestion will not be heeded.

[2409]

A. (Witness drawing on Claimants' Exhibit A-11) Well, there is a dot. That is figuring any time you want to.

Q. Will you draw the course between that dot and the point where the "Denali" was on the chart and indicate at one end the letter "C" and at the other end the letter "D"?

Mr. Long: I object to that question, if Your Honor please. Counsel says, "where the 'Denali' was" on the chart. The witness has testified that he cannot put the point where the ship was because of the current.

The Court: Objection overruled. Read the question.

(Question read as follows:

"Will you draw the course between that dot and the point where the 'Denali' was on the chart and indicate at one end the letter 'C' and at the other end the letter 'D'?"

The Court: If you can answer it, do so, but do it promptly, or if you can draw that course, do it promptly.

Mr. Ryan: I would like the record to show that the witness is hesitating an unusually long time, and

(Testimony of James B. Lawton.)

that that calls merely for putting a letter at one end of the line—the letter “C” and “D” at the other end of the line——

Mr. Long: (Interposing) Now, if Your Honor please, I want to make an objection, if I may.

Mr. Ryan: (Interposing) The witness has indicated a dot. This is the point—— [2410]

The Witness: (Interposing) I said that I wasn't sure. I said that I cannot tell you how much tide there was. I cannot give you the distance.

The Court: Wait one minute, witness, as counsel is making an objection.

Mr. Long: I object to the question. My objection is that counsel's question calls for this witness to answer where the “Denali” was. The witness has testified, if Your Honor please, that he cannot tell where the ship was because of the current.

The Court: The last objection is overruled. That statement of counsel as to what the record should show, the Court can see that. Unless it be some physical representation on the map explanatory of what a witness indicates or points to the expression of counsel as to what the record should show should not properly be made. That statement will be stricken. Proceed. Answer the question if you can, or if you want to demonstrate anything on the map in answer to the question you may do so, if you can.

The Witness: Will you read that question over

(Testimony of James B. Lawton.)

again, please? You want to get those two lines connected up and mark that, is that what you want?

Q. (By Mr. Ryan) Yes.

A. Well, one end of the line is marked already.

Q. Well, listen to the question.

A. Well, I have listened to it.

Q. Listen to the question.

(Question read as follows:

“Will you draw the course between that dot and the point where the [2411] ‘Denali’ was on the chart and indicate at one end the letter ‘C’ and at the other end the letter ‘D’?”)

A. You want to change this “B” to “D”, do you?

Q. I want you to do what that question asks you to do.

A. Well, that is the “B”——

Q. (Interposing) Don’t you understand the question?

A. Yes, I do.

Q. Don’t you understand what I want you to do?

A. Yes.

Q. Then do it.

A. You mean connect this dot and this line up (indicating on chart)?

Q. Connect that dot and draw a line from it to the place where the “Denali” was stranded, as you have already marked.

A. Well, you have that line there, haven’t you

(Testimony of James B. Lawton.)

(indicating on chart)? You are going over that line, aren't you? (Indicating)

Q. Is this the dot that you marked (indicating)?

A. Yes. Right in there (indicating).

Q. Well, draw a little circle around that dot.

(Witness draws circle)

Q. Now write the letter "C" opposite it.

(Witness writes the letter "C")

Q. Now, connect that dot to the place on the reef where the "Denali" was stranded by a line.

A. Well, you have got to draw through that other line then (indicating on chart).

Q. Well, draw that line.

A. I don't know what you are getting at here (indicating on [2412] chart and drawing on chart).

Q. How long was the "Denali" on that course from "C" to "D" as you have marked it on this chart, Claimants' Exhibit A-11?

A. Well, it was approximately nineteen minutes, if you want that.

Q. On a course North $\frac{3}{4}$ East Magnetic, is that right?

A. That is right.

Q. Now, lay down on this chart, ignoring all tidal current of any sort, the course the "Denali" was pursuing just prior to the arrival at that point "C".

Mr. Long: I would like to make the same objection that I have made heretofore. This witness cannot—it is impossible for this witness to make

(Testimony of James B. Lawton.)

any accurate drawing here of that because of the current which he cannot tell about. This is misleading, if Your Honor please.

The Court: Objection overruled. Proceed to do that, if you can do that, witness.

Mr. Long: Yes; if you can do so.

A. What am I supposed to do about the current?

Mr. Long: Ignore it altogether.

The Court: Read the question, please, Mr. Reporter.

(Question read as follows:

“Now lay down on this chart, ignoring all tidal currents of any sort, the course the ‘Denali’ was pursuing just prior to the arrival at that point ‘C’ ”.)

A. Did you say to draw a line on here?

Q. (By Mr. Ryan) Yes. Draw a line running back from that [2413] point “C” showing the course that the “Denali” was on immediately preceding arrival at point “C”.

A. Yes (drawing on chart).

Q. Have you done that?

A. Yes.

Q. Now, indicate on that line the point at which the “Denali” first assumed that course that she was following just before reaching point “C”.

Mr. Long: It is understood, Your Honor, that my objection goes to all this testimony which excludes the current, without reiterating my objection all the time to these questions?

(Testimony of James B. Lawton.)

The Court: Yes.

Mr. Long: To all this testimony which excludes the current, the most important factor involved.

The Court: The record will show that at all times it excludes the condition as stated in the question.

Mr. Ryan, you have five more minutes for this kind of demonstrating by the use of the chart and projecting thereon supposed circumstances. You have five more minutes to finish this kind of an examination, Mr. Ryan.

Mr. Ryan: May I suggest that it is impossible to finish it in five minutes? I am going to have him draw it clear back to Triple Island Light. If the witness will do it promptly, we can finish in that length of time but I have no control over that.

The Court: Having in mind the value of the testimony and the conditions stated, and the amount of time being consumed by the procuring of that, the ruling of five more minutes in which to finish this kind of an [2414] examination will stand.

Mr. Ryan: May I note an exception?

The Court: Exception allowed.

Q. (By Mr. Ryan) Will you mark that point with the letter "E"?

A. I haven't figured out the time yet. Did you want me to use eight miles or nine miles on this course?

Q. That is up to you what you are using.

(Testimony of James B. Lawton.)

A. Well, if it is twenty miles I will put her right down here (indicating on chart).

Q. Now, don't spar here where we have only five minutes in which to do this. Do as you are told.

The Court: Proceed.

Q. (By Mr. Ryan) Put down on this chart—

The Court: (Interposing) Proceed.

Q. (Continuing) —the point where the "Denali" first assumed that course just before she reached point "C".

Mr. Long: I object to counsel raising his voice to the witness. The witness is doing the best that he can.

The Court: Yes. Just hold your voice down, Mr. Ryan.

Mr. Long: He does not have to speed up—

The Court: (Interposing) Now, that is sufficient. The Court has ruled. Answer the question as best you can, and do it promptly.

A. This is from the course coming up to this line, is that what you mean (indicating on chart)?

Q. (By Mr. Ryan) Yes. Up to that point "C".

A. And connecting this one with "C"? [2415]

Q. Yes, that is right; the course that the "Denali" was pursuing just before she reached the point "C".

Mr. Long: Now, if Your Honor please—

Q. (Interposing) How long was she on that course, and indicate it on that chart.

(Testimony of James B. Lawton.)

Mr. Long: If Your Honor please I will have to object to that on the same grounds as stated before. He does not know the current——

A. (Interposing) I told you.

Q. (By Mr. Ryan) Indicate it on the chart.

A. That is twenty-five minutes. How can I indicate that on the chart? Do you want that put in miles is that what you want?

Q. (By Mr. Ryan) Just answer the question.

The Court: The objection is overruled. The question has stated the conditions eliminating the force of current and the witness should answer that.

A. Well that is about——

Q. (Interposing) Indicate by the letter “D” where the “Denali” first assumed that course that she was pursuing immediately before reaching the point “C”.

(Witness marks on chart)

Q. Now——

A. Wait a minute. (Witness continues marking on chart)

Q. Now, lay down on that chart all the other courses that the “Denali” was following, ignoring current, after 1:30 A. M., preceding her arriving at the point “D”.

The Court: The five minutes are up. You may inquire orally of this witness if there is anything you want to inquire about the position of the various [2416] courses. Enough time has been con-

(Testimony of James B. Lawton.)

sumed in demonstrating the work. Proceed. Resume the witness stand, Mr. Witness. The witness will resume the witness stand.

(Witness resumes witness stand)

Mr. Ryan: If the Court please, there is an unanswered question before Your Honor.

The Court: The time is up. You can orally have him state in words any answer to that question, if you wish.

Mr. Ryan: Am I not entitled to the answer to the question that I asked the witness?

The Court: If you wish to ask him orally you may, but the time is up for drawing illustrative courses on the map.

Mr. Ryan: May I have an exception noted——

The Court: (Interposing) Yes.

Mr. Ryan: (Continuing) ——to the ruling of the Court that the witness shall not answer the question that was asked before the Court made this ruling?

The Court: The exception is noted and it is allowed. Proceed.

Q. (By Mr. Ryan) How did the "Denali" get into the position (brings chart over to the Court's bench)? May I ask that opposing counsel do not stand between me and the witness chair?

Mr. Long: I do not want to stand there, but I do not see how I can see the chart otherwise.

The Court: Mr. Long, you may stand up here.

(Testimony of James B. Lawton.)

Mr. Long: All right. Very well. (Stands by the Judge on the bench) [2417]

The Court: You may proceed.

Q. (By Mr. Ryan) How did the "Denali" get in the position marked "X" on that chart by you at 1:30 A. M., May 19, 1935?

A. How did she get into that position?

Q. Yes.

A. How do you mean, how she got into that position?

Q. Well, you tell us how.

A. Wherever she was at she got in her actual position by the set of the current to the westward.

Q. You never saw the current, did you?

A. I never saw the current?

Q. Yes.

A. Well, when you are on a ship——

Q. (Interposing) Answer that by yes or no. Did you ever see the current?

A. It was dark.

Q. Certainly. You didn't see it then. That is your answer, isn't it?

A. You don't have to see it to know——

Q. (Interposing) Then answer it that you didn't see it. You didn't see it, did you?

A. No.

Q. Then all you know is that the ship was some place where she should not have been, isn't that right?

A. Why should not she have been there?

(Testimony of James B. Lawton.)

Q. You think that that was all right, for her to be there?

A. Why, certainly. We are trying to pick up Zayas Island to pilot through the channel there.

Q. I see. But all these inferences of yours about current [2418] have no basis in fact then, have they?

Mr. Long: I must object to that, and ask that the witness be allowed——

Q. (Interposing) Excepting the fact——

Mr. Long: (Interposing) Just a minute.

Q. (Continuing) Excepting the fact that the ship was somewhere other than where you expected her to be?

The Court: The objection is noted and it is overruled. He may answer if he knows.

Mr. Long: May he be permitted to explain, Your Honor?

The Court: He may.

Mr. Long: That is what he is trying to do, Your Honor, please.

Mr. Ryan: If the Court please, that kind of interruption of my cross examination I object to.

The Court: I think so, too, Mr. Long. You may resume your place at the counsel table.

Mr. Long: All right (resuming place at counsel table).

The Court: He may answer if he knows.

The Witness: What was the question?

(Testimony of James B. Lawton.)

(Question read as follows:

“But all these inferences of yours about current have no basis in fact, then, have they, excepting the fact that the ship was somewhere other than where you expected her to be?”)

A. Men sailing through those channels many, many years, know that there is an unknown amount of current that will affect the ship. It has been known for years and years. This is not the first ship that has gone to [2419] Alaska, or that has gone through that passage.

Q. (By Mr. Ryan) Do you understand the question?

A. It is hard to understand it the way you put it.

Mr. Ryan: Read the question again to the witness, Mr. Reporter, and I will ask the Court to request the witness to answer it.

(Question read as follows:

“But all these inferences of yours about current have no basis in fact, then, have they, excepting the fact that the ship was somewhere other than where you expected her to be?”)

Mr. Long: Now, Your Honor, I must object to the form of that question. I am frank to say that I do not understand it.

The Witness: Well, I don't understand it either.

The Court: Well, the objection is overruled. If he can answer the question he should do so, and will. If he does not know the answer to the ques-

(Testimony of James B. Lawton.)

tion he will state so, and state it promptly, and then let us proceed with another question.

(Witness does not answer)

The Court: Proceed.

The Witness: Your Honor, I cannot answer that question because I don't understand the way that it is put there.

The Court: Very well. Ask him another question.

Q. (By Mr. Ryan) How do you know that it was current and not unknown deviation of the compass that put the "Denali" where you did not expect her to be?

A. Because we could feel the current affecting the ship. [2420] That is where we live on the ship, we get used to those feelings. We know that the current is there. Now, we could not actually see it, or it didn't have a name on it, but we knew that there was a current.

The Court: All right. Ask him another question.

Q. (By Mr. Ryan) And that is all that you base it on.

A. I don't know what the pilot based it on. He had many more years knowledge than I did of those waters.

Q. I see.

A. He is the navigator on her. Bear that in mind, please.

(Testimony of James B. Lawton.)

The Court: That is sufficient. Ask him another question.

Q. (By Mr. Ryan) Well, outside of that feel that you felt on this dark night, there was nothing to indicate to you that it was current setting the ship over rather than unknown westerly deviation of the compass, was there?

A. Yes, there was.

Q. What?

A. What time do you mean?

The Court: Well, answer the question the best you can.

A. Yes, there was, because we picked up Dundas Island, and we could tell from her that we were too wide off. Shortly after we picked up Zayas Island, and by watching Zayas Island we could tell that the ship was being set to the westward.

Q. That could have been due either to unknown westerly deviation of the compass—

A. (Interposing) There was no deviation.

Q. (Continuing) —or to the current, isn't that true? [2421]

A. No. There was no westerly deviation.

Q. Well, if there was, it could be due to that, couldn't it?

A. Well, there was none.

Q. Well, if there was it could be due to that?

A. No.

Q. And then it could account for it?

A. No, it could not.

(Testimony of James B. Lawton.)

Q. Why not?

A. Because there was a tide or current there.

Q. Assuming your assumption of current, there was no reasonable explanation of the position in which the "Denali" found herself excepting unknown westerly deviation of the compass, isn't that so?

A. No, that is not so.

Q. Then why isn't it so?

A. Well, maybe the ship was steering bad; maybe the man was not making a good course.

Q. What were your duties on that bridge with reference to the steering?

A. I looked after the steering, yes.

Q. Now, are you charging the helmsman with fault in steering this ship?

A. No, I certainly am not, but I say that that could happen. You asked me what else, didn't you?

Q. Now did that happen on this night? Did the helmsman steer a bad course while you were standing there by him on the bridge?

A. I would not say that he did. I don't recall that he——

Q. (Interposing) Well, if you would not say that he did [2422] that, that is excluded as a reasonable explanation, then, isn't it?

A. Why, I don't recall of her ever steering very bad. She is a good steering ship.

Q. Who was the man steering this ship at the time of this stranding?

(Witness does not answer)

(Testimony of James B. Lawton.)

Q. Do you know his name?

A. No, I do not.

Q. Well, now, taking then the circumstances as they existed on that night, there is no reasonable explanation for the "Denali" being over on that reef excepting unknown westerly deviation of the compass, unless you make this assumption of current, isn't that so?

A. Well, do you want me to assume that we are all blind? There were four men on watch. We all were looking——

Q. (Interposing) Answer that question by yes or no, and then you might explain it if you wish.

The Witness: Read the question again, please.

(Question read as follows:

"Well, now taking then the circumstances as they existed on that night, there is no reasonable explanation for the 'Denali' being over on that reef excepting unknown westerly deviation of the compass, unless you make this assumption of current, isn't that so?")

A. That is quite a long question. I wish you would shorten your question up a little.

Q. Do you understand the question or not?

A. I understand part of it, yes, but you go on with so much stuff in between that you mix everything up. [2423]

Q. Answer it as best you can.

A. Will you please read it again, please?

(Testimony of James B. Lawton.)

(Question read to the witness as follows:

“Well, now, taking then the circumstances as they existed on that night, there is no reasonable explanation for the ‘Denali’ being over on that reef excepting unknown westerly deviation of the compass, unless you make this assumption of current, isn’t that so?”)

A. Did you say, “Unkown amount of westerly deviation”?

Q. Yes. Something wrong with the compass is the only explanation of this stranding unless you assume the current, isn’t that so?

A. If it was unknown, how could you be on a reef? You might be over on Cape Chacon, or something like that.

Q. Well, can you give us any reasonable explanation of the “Denali” hitting that reef excepting something wrong with that compass?

A. Yes, I can.

Q. If you exclude current.

Mr. Long: He has answered that. He said that.

Q. (By Mr. Ryan) Or tidal current.

A. I have to——

Mr. Long: Go ahead and answer the question.

A. I have to exclude current?

Q. (By Mr. Ryan) Yes.

A. That you say that you have got charted? You want me to exclude that?

Q. Yes.

(Testimony of James B. Lawton.)

A. Do you want me to assume that the man on the lookout, [2424] and the man at the wheel, and the pilot and myself were blind, too? Is that what you want me to assume? And that we ran right straight into an island? I don't get the drift of it.

Mr. Ryan: Read the question.

(Question read as follows:

“Well, can you give us any reasonable explanation of the ‘Denali’ hitting that reef excepting something wrong with that compass, if you exclude current or tidal current?”)

The Court: If you can answer it, why, say so, and if you cannot, just say so, and let us proceed. Read the question again.

(Question read) [2425]

A. She might have steered a little bad, if that is what you mean;—another reason besides current and deviation.

Q. Did you notice the “Denali” being steered badly on that night of the stranding?

A. I cannot recall at any time that I did.

Q. You say you do not know who was steering the ship—I show you the deck log book, Claimants' Exhibit A-4, your own handwriting—was the quartermaster Emil Tell?—Isn't that correct?

A. I said I don't know.

Q. Isn't that right; isn't that in your own handwriting?

A. Yes.

(Testimony of James B. Lawton.)

Q. Then you do know who was steering the ship.

A. I do not know the man's name, but I know the man, sure.

Q. Was he a competent helmsman?

A. Yes, sir. He had a license issued by the United States Government, the same as we had.

Q. Was he doing his duties efficiently and properly as helmsman at all times when you noticed his steering of the "Denali", or not?

A. He certainly did, but in waters affected by current the ship doesn't steer one straight line, as anybody knows.

Q. Then you make no suggestion that there was bad steering on the "Denali" this night by that helmsman, do you?

Mr. Long: I object to that as repetitious, I think the witness has answered that question.

The Court: The objection is overruled. That last question will stand.

The Witness: I said I didn't recall that, but it could have happened; he could have steered a little off [2426] on one side of the course or the other.

Q. (By Mr. Ryan) But you didn't see it; you didn't see any such thing happen?

A. I do not recall happening to notice it.

Q. Isn't it the duty of the officer on watch to keep looking through that binnacle at the course, and checking up on the steering?

A. You wouldn't get a ship up that far——

Q. (Interposing) Answer that yes or no, whether that is the duty of the licensed officer on watch.

(Testimony of James B. Lawton.)

A. It is not our duty to stand with our head in the compass, no.

Q. And not to check up on the steering by the helmsman on watch by looking through the binnacle at the lubbers' line and compass reading.

A. Yes.

Q. It is your duty?

A. Yes.

Q. Did you perform your duty on that night?

A. Yes.

Mr. Long: I must object to counsel shouting at the witness.

The Court: Yes; let down your voice, Mr. Ryan. Proceed.

Q. (By Mr. Ryan) When you went on watch at midnight where was the lookout stationed?

A. The lookout, when I went on watch at midnight?

Q. Yes.

A. Which man do you mean?

Q. The lookout who was on watch with you at midnight, where [2427] was he stationed, beginning at midnight?

A. He was told at first to stand by and get the log, the reading of the patent log, when Triple Island Light came abeam, when we blew two whistles.

Q. Who told him that?

A. I told him that.

Q. What was his name?

(Testimony of James B. Lawton.)

A. I don't recall his name.

Q. Was he an able seaman?

A. Yes, he was.

Q. Was he Emil Tell?

A. Yes.

Q. So from 12:00 to 12:06 you had nobody on watch as lookout, is that right?

A. From 12:00 to 12:06?

Q. Yes.

A. You don't have to be right up in the——

The Court: (Interposing) Mr. Lawton——

The Witness: Yes, sir; we did have a man on lookout.

Q. But you were keeping him away from his lookout station, is that right?

A. He hasn't any station; he goes where I tell him to go. He can go up on top of the mast or in the smokestack.

Q. Say from 2:00 to 2:44 in the morning, where was the lookout stationed?

A. At 2:44?

Q. From 2:00 a. m. to 2:44 a. m., on May 19th, where was the lookout stationed?

The Court: If you recall. [2428]

The Witness: I do not recall, sir. I might have had him any place, on one wing, on the other wing, up forward, up in the rigging—wherever we tell the lookout to go to look out, that is what he does.

Q. He was not stationed on the forecastle head, so far as you know, is that right?

(Testimony of James B. Lawton.)

A. I said I don't recall whether I told him to go on the forecastle head or not. I might have.

Q. At 2:37 a. m. was the patent log read or not?

A. Yes; it was.

Q. Who read it?

A. The man on watch.

Q. What man?

A. I don't know.

Q. Was it the lookout?

A. Yes; it was the lookout.

Q. That is, you sent him away from wherever he was and sent him back to the stern of the ship, is that right? Answer the questions, please.

A. Yes; that is right. It took him about one minute or two minutes to do that.

Q. Do you remember seeing the lookout on the forecastle head at all during the period from 2:00 to 2:44 a. m., May 19th?

A. I don't recall that.

Q. I show you these photographs, which are in evidence—well, I show you this one in particular, Claimants' Exhibit A-6-9, Cargo Claimants' Exhibit in connection with the Richards deposition, 4-F, and ask you what those large objects are which are shown immediately [2429] forward of the pilot house of the "Denali"?

Mr. Long: May I see it, counsel? Just let me look at it, please.

A. Those look like tanks to me.

(Testimony of James B. Lawton.)

Q. Of what material?—They are big steel tanks, aren't they?

A. They most likely are. I am not going to swear to that. They might have been iron, or they might have been copper.

Q. What is this object at the port side forward of the pilot house sticking up like—something like a Sampson post would.

A. That is pretty hard to see. Do you mean this right here (indicating on photograph)?

Q. Yes; that thing that sticks up in the air, vertical, right in front of the pilot house.

Mr. Long: It is not right in front of the pilot house. Let the witness explain where it is.

The Court: This is cross examination. If there is anything that needs to be brought up and clarified and explained you may do it on redirect.

Mr. Long: Very well, Your Honor. I am sorry.

The Witness: I do not recognize that, so I will not try to explain it. You can only see a little piece of something there—how can you explain that?

Q. (By Mr. Ryan) Do you know what a steel cargo block looks like?

A. I guess I do, yes.

Q. What is this object here? (Indicating) That black object between the end of the boom and the pilot house, as shown on that photograph? [2430]

A. Did you call it a steel block?

Q. I am asking you what it was, if you know.

(Testimony of James B. Lawton.)

A. Yes. It is a blacksmith shop—it is a blacksmith's shop.

Q. Describe it.

A. It has a hook on each end of the wire falls from the winches, a few links, iron links, and a hook where you hook on the slings with—is that what you mean?

Q. I am asking you what the object is, and of what material was it?

A. That is the most I can make out of it.

Q. Of what material was it?

A. I imagine that it was steel—I wouldn't say steel—it is iron.

Q. How far was it from the standard compass?

Mr. Long: Just a minute, please—

Mr. Ryan: If you know.

Mr. Long: Now, just a minute, the evidence shows these photographs were taken a day or two later, and these booms had been changed from the time when the ship was under way. The evidence so shows.

The Court: Mr. Long, that may possibly be, but it has nothing to do with the appropriateness of this question now propounded to this witness.

Mr. Ryan: I may say, Your Honor, that that statement was not correct; this photograph was taken on the morning of the stranding, according to the evidence in the case.

The Court: The evidence will show what the fact is, and the statement of counsel is not necessary.

(Testimony of James B. Lawton.)

The Witness: Mr. Ryan, will you repeat that question? [2431]

(Question read as follows:

“Q. How far was it from the standard compass?”)

The Court: Answer that question, if you know how far it was.

The Witness: I will have to explain a little bit to answer that.

The Court: If you know how far it was, then you may say so, and then in connection with your answer, or subsequent to your correct answer, if there is any explanation that you feel is needed to make the answer full and complete, then the Court will permit you to make that explanation. It is a simple question, it seems to me.

The Witness: I will try to judge the distance, but it is hard to do it here, as the picture is very small. I would say 40 feet from the compass.

Q. You think that object that is shown on that photograph, to which I have called your attention, is 40 feet from the standard compass?

A. Yes, sir. If you will look——

Q. (Interposing) All right. Will you mark that with a fountain pen with the letter “A”, the thing that you say was 40 feet from the standard compass?

Mr. Long: If Your Honor please, I object to this because the photograph is obviously so small that you cannot even see it.

(Testimony of James B. Lawton.)

The Court: The objection is overruled, and you may be seated, Mr. Long. It is a matter that may be inquired into on redirect examination. I am not going to instruct you any further about that. Proceed. [2432]

The Witness: You wanted me to mark down how far——

Q. (By Mr. Ryan) I want you to mark down there on that photograph the object that you say was 40 feet from the standard compass.

A. Mark it down here?

Q. Yes. Put a letter "A" right alongside of it.

A. Is that all right (indicating on exhibit)?

Q. What was the height of the eye of the person standing on the bridge of the "Denali" above the surface of the water in the sea?

A. What bridge do you mean?

Q. The bridge of the "Denali".

A. What deck do you mean?

Q. Standing on the bridge of the "Denali", what was the height of the eye of the officer standing there above the surface water in the sea?

A. It depends on how tall the officer is.

Q. All right. How high were your eyes when you were standing on that bridge, back of the helmsman, above the surface of the water in the sea?

A. Approximately 28 to 30 feet.

Q. Well, you have to know that fact in order to use the tables in Bowditch, do you not?

(Testimony of James B. Lawton.)

A. We have to know that fact when we take the longitude of the sun, yes.

Q. When you were asked the question before the United States Steamboat Inspectors you stated positively 28 feet, didn't you?

A. I believe that is what it is. It is 28 feet.

Q. Then why did you add an extra two feet this morning? [2433]

A. Well, I don't know—why did I?—I have no reason to add two feet. Maybe it was 26 feet, if that helps you.

Q. What is your height?

A. 5 feet, 7 inches.

Q. What is the height of the bridge above the forward well deck of the "Denali"?

A. I don't recall, sir.

Q. Well, give us your best estimate.

A. Well, that is pretty hard, to give an estimate there.

The Court: If you can make an approximation of the amount, do so.

The Witness: I would say 10 feet or so, I don't know. That is just approximate. I have never measured it.

Q. (By Mr. Ryan) What was the height of the well deck above the surface of the water on that night of the stranding?

A. From the rail down to the water?

Q. From the forward well deck down to the surface of the water in the sea, what was the height on the night of the stranding when you were on watch?

(Testimony of James B. Lawton.)

A. From the rail down to the water, that is pretty hard—I am just guessing if I give you an answer.

Q. Give us your best estimate.

A. 12 feet, or something like that.

Q. What are these other objects that are shown in the photograph in the forward well deck of the “Denali”, if you know? I show you Cargo Claimants’ Exhibit 4-F, in connection with the deposition of Commander Richards, which is now marked Claimants’ Exhibit A-6-9?

A. The other objects on the fore deck?

Q. Yes; in the forward well deck. What are they, and of what [2434] material are they?

A. Well, it looks like a tank up there, in this picture.

Q. How many tanks?

A. On the forward deck?

Q. Just forward of the pilot house; how many tanks are there, or were there in the forward well deck of the “Denali”, right next to the pilot house?

A. I see one. You mean this right here (indicating)?

Q. How many tanks do you see there?

A. One, this one up here, too.

Q. The ones that are right next to the pilot house, how many do you see there, on the forward well deck of the “Denali”?

A. One that I recognize as a tank, and the other one I don’t recognize exactly as a tank.

(Testimony of James B. Lawton.)

Q. Well, what was it, a rock crusher, an iron rock crusher?

A. Not that I can see.

Q. Was there an iron rock crusher on the forward well deck of the "Denali"?

A. There was some machinery. I don't know whether it was a rock crusher.

Q. There was a whole lot of machinery right down there in the forward well deck, wasn't there?

A. There was some.

Q. How would a man, the lookout, get over all that stuff and get up to the forecastle head?

A. Oh, that doesn't cover the whole deck. You have to have room in between the hatches, so you can batten the hatches down.

Q. Would you have that?

A. Well, you have to or you cannot batten the hatches down. [2435]

Q. Anyway, there was a lot of iron in the forward well deck of the "Denali"?

A. I said there was some there. I don't recall how much.

Q. Well, how much was there?

A. I don't recall just how much there was.

Q. I will refresh your recollection. There were two sheet iron tanks on No. 2 hatch, weren't there?

A. Sheet iron tanks?

Q. Yes.

A. I didn't load the ship; I had nothing to do with the cargo, but I believe there were some tanks there, yes.

(Testimony of James B. Lawton.)

Q. And there was a motor grader set, and parts, on the port side between No. 1 and No. 2 hatches, wasn't there?

The Court: Mr. Ryan, what is there in the direct examination that makes this proper cross examination? Do you recall what there was?

Mr. Ryan: He was asked about deviation, Your Honor, of the course, this fellow was, on direct examination.

Mr. Long: I would suggest that counsel read the record.

Mr. Ryan: This man doesn't know anything at all about the facts that you have to know to go by.

The Court: The Court rules of its own motion that this is improper cross examination.

Mr. Long: And I make the objection on that ground.

Mr. Ryan: I note an exception.

The Court: Exception allowed. Proceed, and ask him about some other subject matter.

Q. When you saw Tree Point Light ahead, how did it bear?

A. It bore a little on the port bow. [2436]

Q. How much on the port bow?

A. I didn't take a bearing on the right, sir—about a point or so—a point and a half, maybe.

Q. Do you know how much it bore on the port bow?

A. I didn't take a bearing on it, sir. That is all I can answer you.

(Testimony of James B. Lawton.)

Q. Did it bear one degree, or 15 degrees, or 30 degrees, or do you know?

A. I said that I didn't take a bearing. It was on the port bow a little, a point, maybe.

Q. Did you or did you not testify before the United States Steamboat Inspectors, at the trial on June 21, 1935, on page 6, as follows:

“Q. When you saw the light ahead how did it bear, on the port bow, or starboard bow, or dead ahead?

A. A little on the port bow. I don't know how much.”)

Did you so testify?

A. I believe I just did now, the same as then.

Q. How do you happen to remember about a point, or a point and a half, or something like that, now, when you couldn't tell it at that time?

A. Well, I don't remember it now. It was around a point, I imagine.

Q. But you don't know?

A. I didn't take a bearing on it.

Q. Did you see Barren Island Light at any time?

A. No; I cannot recall ever seeing Barren Island Light.

Q. Barren Island Light was up to the north and west of the position of the “Denali”, wasn't it?

A. Yes; I know where it is. [2437]

Q. Did you change the course when Triple Island Light was abeam?

(Testimony of James B. Lawton.)

A. Did I change the course?

Q. Yes.

A. No; I didn't.

Q. Did you or did you not testify on June 21, 1935, before the United States Steamboat Inspectors, in Seattle, at the trial, page 7, as follows:

“Q. You changed the course when Triple Island Light was abeam?

A. Yes, sir.”

Did you so testify?

A. I never told anybody I changed the course. It is a mistake.

Q. You deny that you so testified, is that right?

A. Yes. I never at no time said I changed the course of the “Denali”.

Q. Now, in this log book, that you stated was in your handwriting on this watch, from midnight down to 2:44 a. m., May 19, 1935, you entered the distance when abeam of Triple Island Light, did you not (showing)?

Mr. Long: That is objected to as repetitious. Counsel went all over that yesterday, in detail.

The Witness: I answered that yesterday.

The Court: Has that been gone into, Mr. Ryan?

Mr. Ryan: No; this point has not been gone into, the point that I am going into now, and that is the reason I am going into it now.

The Court: All right; proceed.

Q. (By Mr. Ryan) You entered that, didn't you?

(Testimony of James B. Lawton.)

A. Yes, I did. I told you yesterday I entered that. [2438]

Q. When Triple Island Light was abeam the second time why didn't you enter the distance abeam?

A. The distance abeam?

Q. Yes; at 1:00 a. m.

A. How do you mean, the distance abeam?—Distance abeam?—What do you mean?

Q. When Triple Island Light was abeam for the second time, on the morning of May 19th, at 1:00 a. m., why didn't you enter in the log book the distance that the light, Triple Island Light, was from the "Denali", when it was abeam that second time?

A. The distance we were off, you mean, off the Light?

Q. Yes.

A. Why, I didn't enter the distance?

Q. Why not?

A. Because I didn't take a bearing on it, figure out any distance, that is why I didn't enter it.

Q. What did you enter with reference to that second abeam bearing on Triple Island Light?

A. I entered the minutes run.

Q. You entered 54 minutes, isn't that right?

A. Yes.

Q. Does that make any sense?

A. Sure.

Q. What?

(Testimony of James B. Lawton.)

A. It means we ran 54 minutes between Triple Island Light abeam the first time and Triple Island Light abeam the second time.

Q. With that information couldn't you figure out the distance abeam, that second time? [2439]

A. Well, I did not.

Q. Why didn't you?

A. Because the pilot was looking for his landmarks. He was navigating by the landmarks he was going to pick up. He was not interested——

Q. (Interposing) Did the pilot tell you not to do it?

A. He didn't tell me to do it.

Q. Do you remember when you passed Prince Lebo Island?

A. Well, I cannot recall that I do remember when we passed it.

Q. Did you ever see Prince Lebo Island?

A. Not to my knowledge.

Q. Did you ever look for it, on that night?

A. Oh, naturally.

Q. Why couldn't you see it?

A. The island has a background much larger than it is, and in that kind of atmosphere the island merges right in with the larger one in the background of it.

Q. You mean the hazy weather is the reason you couldn't see Prince Lebo Island?

A. No; I wouldn't say that.

Q. Well, what do you mean?

(Testimony of James B. Lawton.)

A. I mean if you stood it right out in the middle of the ocean and ran by it you could have seen it, most likely, but if you ran by it in that place, with the black background, large mountains and many shadows in the mountains, night shadows, it was impossible to pick it up, as far as I could see.

Q. What was the height of Prince Lebo Island?

A. It is very low.

Q. What height, do you know? [2440]

A. I don't think I remember the height. It is low.

Q. What is your best estimate of its height?

A. Well, I cannot recall the height of Prince Lebo Island.

Q. What does this chart, No. 2828, show to be the height of Prince Lebo Island; referring to Claimants' Exhibit A-11?

A. It shows 200 feet.

Q. It shows 200 feet. Well, when the "Denali" was at the point marked with the cross, which you say was at 1:30 a. m., what was the nearest land to the "Denali" at that time?

A. Why, I imagine Prince Lebo Island was.

Q. Well, you couldn't see Prince Lebo Island, and you could see what?

A. I imagine I could see——

Q. (Interposing) Do not imagine anything, if you do not know, say that you do not know.

A. I said the high land of Dundas Island. The high land on Dundas Island is Mt. Hendron, 1400 feet.

(Testimony of James B. Lawton.)

Q. What else could you see at 1:30?

A. At 1:30, you say?

Q. Yes.

A. I could see Zayas Island, too.

Q. And Zayas Island is much farther away than Prince Lebo Island was at that time, wasn't it?

A. Yes.

Q. So the nearest land to you, you couldn't see at all?

A. I explained to you why you couldn't see it.

Q. You couldn't see it at all, could you, the nearest land to you?

A. I don't recall of ever seeing it, no. [2441]

Q. And it was 200 feet high?

A. Yes.

Q. And yet you think you could see miles and miles away something else, away off in the distance?

Mr. Long: I object to counsel arguing with the witness and raising his voice again.

Mr. Ryan: I am not raising my voice.

The Court: The objection is overruled, and the witness may explain his answer, if he wishes.

The Witness: I wish to tell Mr. Ryan that 200 feet is very low, when you are facing an island when it is in front of high land, that is, mountains over 1000 feet high. In the night time it will look like part of the island. If it were sitting up by itself in the middle of the ocean it would be a distinct landmark of its own.

The Court: That is sufficient. Proceed.

(Testimony of James B. Lawton.)

Q. (By Mr. Ryan) What time did it begin to break day on the morning of May 19, 1935?

A. It was around 3:00 a. m., sir.

Q. When the "Denali" struck was it pitch dark or not?

A. No; it was not pitch dark.

Q. What was it?—Was it dark?

A. Yes; it was dark.

Q. Did you or did you not testify before the United States Steamboat Inspectors, on June 21, 1935, as follows, page 8:

"Q. When the vessel struck it was pitch dark?

A. Yes, sir; it was dark."

Did you so testify? [2442]

A. Just like I told you now.

Q. Did you so testify?

A. I don't recall exactly, but I believe I did.

The Court: If there is no difference between his testimony then and now, then there is no use in cluttering up the record, Mr. Ryan.

Q. (By Mr. Ryan) On what course was the "Denali" when she crossed the line of bearing between Triple Island Light and Barren Island Light?

A. I don't recall what course she was on then.

Q. Well, will you look at the chart and see if that refreshes your recollection?

The Court: Will you look at it and see if it does?

Mr. Long: May I make an objection, Your Honor?

(Testimony of James B. Lawton.)

The Court: Yes.

Mr. Long: I object to this as improper cross examination. No mention was made on direct examination, or any place else, of Barren Island Light, or any direction from Barren Island Light.

The Court: Some mention was made of some of the courses involved in that neighborhood, or in those waters?

Mr. Long: May I suggest, Your Honor, that the only thing that has come out has been on cross examination, where this witness said he could not see Barren Island Light.

The Court: Well, the objection is overruled.

Mr. Long: Exception, Your Honor.

The Court: Exception allowed.

The Witness: Will you point out Barren Island Light for me on this chart? [2443]

The Court: You mean you cannot locate it on this chart? Is that what you mean?

The Witness: I do not seem to see it there.

The Court: The witness says he cannot see it on this chart.

Q. (By Mr. Ryan) I show you Claimants' Exhibit A-10, Chart No. 8102, and ask you if you can find Barren Island Light on it?

A. Yes, sir.

Q. Now, tell us on what course the "Denali" was at the time she crossed the line of bearing between Triple Island Light and Barren Island light?

(Testimony of James B. Lawton.)

A. I do not recall that, sir.

Q. Can you tell us now?

A. I have told you that I do not know exactly where we were at. How can I tell you what the course was?

The Court: Ask him another question.

Q. (By Mr. Ryan) You cannot tell us what course you were on?

A. No, I cannot say, sir. [2444]

The Court: Ask him another question.

Q. You cannot tell us what course you were on?

A. No, I cannot, sir.

Q. At 1:30 A. M. or thereabouts on May 19th, 1935?

A. You tell me what—

Q. (Interposing) I am asking you to tell us. Do you mean to tell us that you cannot tell us now what course you were on shortly after 1:30 A. M., on May 19, 1935?

A. Yes. ...

Q. You can tell us?

A. Yes.

Q. Then do it.

A. Shortly after—

Q. (Interposing) The line of bearing between Triple Island Light and Barren Island Light crosses the course that the "Denali" was following?

Mr. Long: If Your Honor please, may I make an objection—

A. (Interposing) We never navigated by that—

(Testimony of James B. Lawton.)

The Court: (Interposing) Yes, you may, Mr. Long.

Mr. Long: There is no testimony, except counsel's own statement about any course from Barren Island Light. This witness has told us not only once but three times that Barren Island Light was not visible. I do not see why counsel should confuse the witness' testimony to the Court.

The Court: I cannot tell with certainty whether or not Barren Island Light was located within the vicinity of one of these courses pursued, or attempted [2445] to be pursued by the "Denali" on the voyage in question. Therefore the objection is overuled. I think it is in the general vicinity of one of these courses that the vessel is supposed to have been on, and if the witness can answer the question, he may do so.

A. I cannot answer it because we could not see the light. He asked me if we could see it, and I told him, "No".

Q. (By Mr. Ryan) Will you come over to this table and bring with you some parallel rulers—

The Court: (Interposing) No, he will not do that. Ask him the question.

Q. (By Mr. Ryan) Now, you have the chart lying before you, Claimants' A-10, "C & G S Chart No. 8102"—don't you?

A. Yes, sir.

Q. Now, you can see Barren Island Light there, can you not (indicating).

(Testimony of James B. Lawton.)

A. Yes, sir.

Q. And you can see Triple Island Light?

A. Yes, sir.

Q. And you can see a line joining the two—I mean a mental line joining those two lights there, Triple Island Light and Barren Island Light?

A. Yes.

Q. Now, the course that the “Denali” was pursuing from 1:30 A. M. on May 19th to the point of stranding crosses that line, doesn’t it?

A. Yes, but we didn’t see——

Q. (Interposing) All right. Indicate where it crosses that line on that chart, Claimants’ Exhibit A-10?

A. I don’t know where it crossed it. We didn’t see Barren [2446] Island Light.

Q. Well, you can give us that, about what time it crossed that line, can you not?

A. I am not giving you any estimation about that. I told you that we didn’t see that light, and we do not navigate by lights that we do not see. You put a line yourself on that.

Mr. Ryan: If the Court please, it is really necessary to have the witness draw a line between Barren Island Light and Triple Island Light, and then have him lay the “Denali’s” course across that, so that that point can be fixed as a foundation for impeachment, or for further impeachment of this witness.

The Court: The witness says that he cannot make the estimate of the line, or the approximate

(Testimony of James B. Lawton.)

location of it, because he did not see the light in question, and so far as he knew the ship did not move with reference to any bearing on it.

Mr. Ryan: If the Court please, may I suggest that that has nothing to do with the point, for this reason, that Barren Island Light he has picked out on the chart, and he has picked out Triple Island Light. Between those two it can be laid down with a ruler on the chart. Now, the witness has undertaken here on direct to give us just the courses that this vessel pursued, and the length of time that she pursued them, magnetic, at all times from leaving Triple Island Light until the point of the stranding. Now, he can show us where that line crosses that line between those two [2447] points.

The Court: Can you do that?

The Witness: To draw that line between Triple—

The Court: (Interposing) In view of the fact, can you show that?

The Witness: Yes, a line, Your Honor, but that is a line between two points on the chart, and one of these points at no time did we see. He wants us to place the ship somewheres on this line between the two lights, but I told him that I could not place it—

The Court: (Interposing) Very well—

A. (Continuing) —on that line.

The Court: Very well. In view of the testimony the request is declined. Proceed.

(Testimony of James B. Lawton.)

Mr. Ryan: May I suggest that the witness testified a few moments ago——

The Court: (Interposing) The ruling has been made, and it will stand.

Q. (By Mr. Ryan) But the "Denali" crossed that line—a line drawn between Triple Island Light and Barren Island Light, didn't it?

A. Yes, sir, but I don't know where we were when we crossed it. I told you that before.

The Court: Proceed with another question.

Q. (By Mr. Ryan) Did you or did you not testify before the United States Steamboat Inspectors on June 21, 1935, at the trial of Captain Obert as follows:——

Mr. Long: What page?

Mr. Ryan: Page 8.

Q. (By Mr. Ryan) Did you not testify at that time as [2448] follows:

"Q. Will you step to the chart, Mr. Lawton?

A. Yes, sir.

Q. I will designate that as the supposed position of the ship when Triple Island was abeam. As the ship proceeded on its course North $\frac{3}{4}$ West it crossed this line of bearing between Triple Island and Barren Island, is that clear to you?

A. Yes, sir."

Did you or did you not so testify?

A. I don't recall that, sir.

(Testimony of James B. Lawton.)

Q. Do you deny that you did so testify?

A. No, I don't deny it.

Mr. Long: Where is this place that you are reading from?

Mr. Ryan: On page 8.

Mr. Long: Is this on the trial of Captain Obert?

Mr. Ryan: There is only one trial.

Mr. Long: I cannot locate it.

Q. (By Mr. Ryan) Now, after Triple Island light was abeam the second time the "Denali" could go an hour, could it not, and that light still be visible under the conditions then existing?

A. Yes.

Q. Did you see Triple Island Light for one hour after the "Denali" had passed her for the second time abeam at 1:00 A. M. on May 19, 1935?

A. Well, I don't recall right now, sir, whether I did see it or whether I didn't see it. [2449]

Q. For how long a period did you see it?

A. I don't recall that, sir.

Q. All right. Did you or did you not testify on June 21, 1935, before the United States Steamboat Inspectors in Seattle, at the trial, page 8 of the official transcript, as follows:

"Q. After the light was abeam the ship could go an hour, couldn't it, shouldn't that light still be visible?

A. Yes, it should be.

Q. Didn't you see it?

(Testimony of James B. Lawton.)

A. I looked several times, but I don't know just how far we were ahead.

Q. How long was it approximately that you saw that light after it was abeam?

A. About an hour".

Did you or did you not so testify under oath? And then following that,

"Q. You saw that light about an hour after it was abeam?

A. Something like that".

Did you or did you not so testify under oath?

A. I cannot recall, but if it is there I must have said that.

Q. Do you deny that you so testified——

A. (Interposing) No, I do not.

Q. (Continuing) ——under oath at that time?

A. No, I do not.

Q. Was there any conspicuous object on Zayas Island that you could have taken a bearing on?

[2450]

A. No, sir.

The Court: You are referring to the time of the stranding, or the approximate time of the stranding?

Q. (By Mr. Ryan) From 1:30 up to the time of the stranding.

A. No, sir.

Q. What do you think about keeping the ship going full speed if you didn't know exactly where she was?

(Testimony of James B. Lawton.)

A. What was that question?

Q. (By Mr. Ryan) Read the question.

(Question read as follows:

“What do you think about keeping the ship going full speed if you didn’t know exactly where she was?”)

A. Do you want me to answer that?

Q. Yes.

A. Why, I think it is all right.

Q. Why is it all right? Why was it all right on that night?

A. Well, it was all right because we were going full speed through the currents, and everything seemed to be fine and dandy. There is no reason why you should not go full speed.

Q. Right up to the time of the stranding, isn’t that so?

A. That is what I believe, yes, sir.

Q. Do you think that the pilot used good judgment in all respects in connection with navigating this ship?

A. Yes, I do.

Q. On the night of the stranding?

A. Yes, I do.

Q. You are satisfied that the pilot conducted himself in a shipshape and proper manner, are you, at all times, on [2451] this night of the stranding?

A. Well, I thought that he did, and I still think that he did.

(Testimony of James B. Lawton.)

Q. You felt confident that there was no doubt of the ship's position, did you, up to the moment of stranding?

A. I had confidence in the pilot, knowing that he had the ship where he wanted it through his local knowledge, being able to see Zayas Island on one hand and Dundas Island on the other hand.

Mr. Ryan: Will you read the question, and please answer it directly, if you can.

(Question read as follows:

“You felt confident that there was no doubt of the ship's position, did you, up to the moment of the stranding?”)

A. No, I had no doubt.

Q. And you were satisfied at all times of the way that things were being conducted up to the moment of the stranding?

A. Yes, sir, I was.

Q. Now, was the “Denali” behind time in leaving Seattle on this voyage?

A. She was a little late, if that is what you mean.

Q. How late was she?

A. Well, they sailed when they got the cargo loaded. I don't know what time they were going to sail.

Q. Well, she was due to sail the previous day, wasn't she?

A. I believe so, yes, sir.

(Testimony of James B. Lawton.)

Mr. Ryan: That is all, Your Honor.

Mr. Pellegrini: I have a few questions that I want to ask the witness. [2452]

Mr. Ryan: If the Court please, there is a motion that we want to make before Mr. Pellegrini starts.

Mr. Pellegrini: Do you wish to make the motion now?

Mr. Ryan: Mr. Summers will make the motion.

The Court: Very well.

Mr. Summers: I will wait until Mr. Pellegrini is through with his examination.

The Court: Very well.

Cross Examination

By Mr. Pellegrini:

Q. Mr. Lawton, I believe you testified yesterday that at the time of the stranding the ship was on a North $\frac{3}{4}$ East course, is that right?

A. Yes, sir.

Q. Now, you had previously testified on the examination before the Steamboat Inspectors on May 24, I believe, that at the time of the stranding the ship was on a North $\frac{3}{4}$ West heading, isn't that correct?

Mr. Long: That is objected to as being repetitious. At least half an hour to three-quarters of an hour was spent on that.

A. Yes, sir, I did.

The Court: What do you say about that, Mr. Pellegrini?

(Testimony of James B. Lawton.)

Mr. Pellegrini: At this time I wish to make this statement to the Court. I realize that this is in some [2453] degree repetitious, but the Government has a far greater interest in this case than the mere collection of the sum of \$38,000. This is a case involving the testimony of these witnesses before the Steamboat Inspectors, when they were under oath, and——

Mr. Long (Interposing) I make the objection——

Mr. Pellegrini: (Continuing) ——and I am going to request the Court at this time to overrule that objection.

Mr. Long: I object to counsel making this speech.

The Court: Just wait, Mr. Long.

Mr. Long: Well, it is just a prepared speech, obviously.

Mr. Pellegrini: It is not a prepared speech, Mr. Long.

The Court: Wait until counsel gets through, Mr. Long.

Mr. Long: Well, I want to interpose an objection.

The Court: Wait until counsel gets through before you interpose the objection.

Mr. Long: Very well.

Mr. Pellegrini: I request right at this time, if the Court please, in view of the Government's obvious interest, in addition to the collection of this money, to be allowed to cross examine this witness. I can assure the Court that it needn't take more than five or ten minutes.

(Testimony of James B. Lawton.)

The Court: The request is denied.

Mr. Pellegrini: Exception. [2454]

The Court: Exception allowed.

Mr. Long: What was Your Honor's ruling?

The Court: The request is denied of further cross examination on that point by Mr. Pellegrini.

Mr. Pellegrini: Now, I wish to show the Court as to page 16 and page 17 of the investigation, that Mr. Ryan has not covered some of the portions of that in his cross examination.

The Court: If it relates to the subject matter—

Mr. Pellegrini: (Interposing) It relates to the same subject matter.

The Court: Then it is denied. The rule will stand as applied to that.

Mr. Pellegrini: May I note an exception?

The Court: Yes.

Mr. Pellegrini: To the Court's ruling?

The Court: Yes. Exception allowed. Mr. Summers, do you wish to make your motion now?

Mr. Summers: Yes. Very briefly, Your Honor, I want to move to strike from the testimony of this witness all testimony which is in contradiction of the interrogatory, or, rather, which is in contradiction to petitioner's answer to the interrogatory that I read to the Court before, wherein the witness indicated that he could see that the visibility was in excess of that fixed by the petitioner in its answer to that interrogatory. And also wherein the witness has testified to unexpected or unanticipated

(Testimony of James B. Lawton.)

tidal currents. The question and answer with respect to visibility is this,

“Q. What was the condition of visibility as [2455] to range?

A. Estimated from one to two miles as to unlighted sizable objects”.

Then this question and answer?

“Q. Were all of such conditions usual or unusual?

A. Petitioner is unable to state with accuracy whether the conditions at the time of stranding, as stated in the foregoing answer, were usual or unusual, but considering the locality; the season of the year; time of day and state of the tide such conditions were such as might be reasonably anticipated or expected”.

Hence claimants' motion is to strike from the testimony of this witness any testimony with respect to tides not expected or not calculable and also visible in excess of the answer in the interrogatory.

The Court: Motion denied.

Mr. Summers: Exception.

The Court: Exception allowed.

Mr. Pellegrini: At this time I wish to make an offer of proof as follows: I wish to show that on May 24, 1935, before the Steamboat Inspectors, at the investigation of the wreck of the Steamship “Denali”, this witness testified as follows:

(Testimony of James B. Lawton.)

“Q. Do you identify that writing as your own?

A. No, sir, I believe that is the second mate's.

Q. Is this your writing (designating)?

A. Yes, sir, that's my writing.

Q. When the vessel struck it was steering North [2456] $\frac{3}{4}$ West?

A. Yes, sir.

Q. How do you con the compasses?

A. We knock when the vessel is on her course.

Q. The man says, 'Right on', or something of that sort?

A. Yes, sir.

Q. How long do you do that?

A. Three or four times.

Q. You are positive there was no error in conning the course between the standard compass and the steering compass?

A. Yes, sir.

Q. The pilot house compass is North $\frac{3}{4}$ West?

A. Yes, sir.

Q. You identified that by tapping?

A. Yes, sir.

Q. And the man at the wheel responded, so you knew that he got it, is that right?

A. Yes, sir''.

(Testimony of James B. Lawton.)

The Court: The offer is refused.

Mr. Pellegrini: Exception.

The Court: Exception allowed.

Mr. Long: Anything further, Mr. Ryan?

Mr. Ryan: No.

The Court: Be as brief as possible, if you will,
Mr. Long.

Mr. Long: I will. Counsel has read pieces and parts of many questions and answers, and I think that it is only fair, not only to Your Honor, but to the [2457] witness, that the entire answers be read and brought out clearly.

The Court: Proceed.

Redirect Examination

By Mr. Long:

Q. Mr. Lawton, you testified at the trial of Captain Obert, following the investigation which was made——

Mr. Ryan: (Interposing) May I make a motion to strike from the record that remark by counsel about unfairness? It was perfectly proper, this examination of the witness that I made.

The Court: Yes. The motion is granted, and the remark is stricken, and I will say this, Mr. Long, it is only where counsel in cross examining called the witness' attention to some statement that the record showed that he made at the trial, or investigation before the United States Steamboat Inspectors—it is only in connection with that that I will

(Testimony of James B. Lawton.)

permit you to read anything further or call his attention to anything further.

Mr. Long: I realize that, Your Honor, and I have gone over the record carefully last evening to make that very clear.

The Court: Proceed.

Q. (By Mr. Long) Now, you testified at Captain Obert's trial when he was tried for negligence in the stranding of this vessel, is that right?

A. Yes, I did. [2458]

Q. And that was the subject of inquiry at that particular time, wasn't it, by the Steamboat Inspectors?

Mr. Summers: That is not redirect, and I object to that.

The Court: Objection sustained.

Mr. Long: I was trying, Your Honor, just to bring out the full background of this.

The Court: Well, it has already been brought before the Court and the witness, and no further preliminaries are needed.

Q. (By Mr. Long) You were asked by Mr. Ryan on cross examination whether or not he made entries in the log book, and under whose direction you made them?

A. Yes.

Q. Now, I will ask you if at the time of the trial of Captain Obert you testified as follows, or substantially as follows:

(Testimony of James B. Lawton.)

“Q. Do you identify that log book?

A. Yes, sir.

Q. Whose writing is that?

A. That’s mine, sir.

Q. Who directed you to make those entries designating)?

A. The pilot on watch, Mr. Obert.

Q. You made no entries there on your own initiative?

A. No, sir, I took orders from Mr. Obert.

Q. You made no entries in that book unless Mr. Obert told you to?

A. No, sir”. [2459]

Did you or did you not so testify in words or substance?

A. Yes, I did.

Q. And is or is not that the fact?

A. Yes, that is the fact.

Q. Now, counsel asked you—Mr. Ryan read from the transcript of the testimony at the trial of Captain Obert with respect to negligence in the stranding of this vessel a series of questions concerning the time that the vessel was on the course North. I want to call your attention to the questions that he asked you, and then call your attention to the following subsequent questions and answers.

“Q. How long did she stay on that course North, about fifteen minutes?

A. Something like that, fifteen or twenty minutes.

(Testimony of James B. Lawton.)

Q. Can you find any change of that in the log?

A. No, sir.

Q. Why did the pilot change for fifteen minutes, do you know?

A. The tide was there and to keep her off the reef.

Q. To haul her out a little?

A. Yes, sir''.

Mr. Summers: I object to that, if Your Honor please, on the ground that that is not proper re-direct. It does not explain the question and answer that was asked by Mr. Ryan.

The Court: Mr. Long, what phase of it does it seem [2460] to you to clear up?

Mr. Long: Well, counsel just read the first two or three questions that I have just read. He did not read the question, "Why did the pilot change for fifteen minutes, do you know?" which was part of the whole substance of which the inspector was interrogating this witness about. The first three parts of it mean nothing without the last.

The Court: You have read them all together?

Mr. Long: I read them all together, yes. That is my only purpose.

The Court: Very well. And you are closing with this last, additional statement?

Mr. Long: That is right, Your Honor.

The Court: Then the objection is overruled. Was it answered?

(Testimony of James B. Lawton.)

Mr. Long: I do not recall that it was. I will ask the witness.

Q. (By Mr. Long) Did you or did you not so testify, in substance and in effect?

A. As far as I remember I did, sir.

Q. Now, counsel interrogated you concerning certain statements here about the visibility. I will ask you if you didn't testify in substance or in effect at the trial of Captain Obert for negligence with reference to the stranding of this vessel substantially as follows:

“Q. How could you see, was it good?

A. The visibility was fairly good ahead.

Q. Could you see the land on your starboard beam? [2461]

A. Yes, sir.

Q. Could you see Dundas Island?

A. Yes, sir”.

Did you or did you not so testify, in substance?

A. Yes, as I remember, I did.

Mr. Summers: What was the answer?

(Answer read)

Q. (By Mr. Long) Isn't that the fact; is that true?

A. That is the fact, yes, sir.

Q. Now, at the same trial of Captain Obert, concerning the atmosphere, counsel examined you on cross examination and did you or did you not testify as follows, substantially,—did you or did you

(Testimony of James B. Lawton.)

not testify substantially in words and substance as follows:

“Q. The atmosphere was clear, wasn’t it?

A. Yes, sir”.

Did you so testify?

A. Yes, sir.

The Court: I did not get the witness’ answer.

A. Yes, sir.

The Court: All right.

Q. (By Mr. Long) Now, counsel asked you on cross examination—he read you this question from the investigation which was made prior to the time of the trial of Captain Obert for negligence—

“Q. How was it right ahead?

A. Hazy on both sides.”

Did you testify substantially as follows, immediately following that and in explanation of that,

“Q. How far could you see in your opinion?

[2462]

A. Eight miles.

Q. On the surface of the water?

A. Yes, sir”.

Did you not so testify?

A. Yes, I did.

Q. Now, counsel referred to what the pilot house compass was after you had conned the course as Mr. Pellegrini even mentioned. After you had conned the course.

The Court: Mr. Pellegrini did not propound any questions, as I recall.

(Testimony of James B. Lawton.)

Mr. Long: Very well. I will direct that entirely to Mr. Ryan's questions. Strike the reference, Mr. Reporter, to Mr. Pellegrini.

Q. (By Mr. Long) The question was, following a discussion between yourself and the Inspector of question and answer as to conning courses and putting the ship on her course, and the question was asked you,

“Q. The pilot house compass is North $\frac{3}{4}$ West?

A. Yes, sir”,

to what time does that refer?

A. As I recall it that refers to the time that we originally went on that course, when Triple Island Light was abeam at 12:06 A. M.

Q. Now, counsel asked you in connection with—interrogated you in connection with the trial and investigation and asked you the following question,

“Q. Mr. Lawton, have you any information which you wish to give to the Board relative to this case?

A. No, sir, I haven't”. [2463]

Did you or did not testify immediately following that as follows:

“Q. What in your opinion was the cause of this accident?

A. The best I can assume was the tide”.

Did you or did you not so testify at that time?

A. Yes, I believe I did.

(Testimony of James B. Lawton.)

Q. And in connection with the trial of Captain Obert for negligence in the matter of the stranding of the vessel, on that same occasion, did you or did you not testify as follows——

“Q. Did you see this land——”

Mr. Ryan: (Interposing) When is this?

Mr. Long: This is at the trial.

The Court: At the trial?

Mr. Long: Yes. This is at the trial, at page 8. I have not the official copy, so I cannot tell you where that appears on your copy.

The Court: Is it near the end of the transcript?

Mr. Long: Yes. Just before Inspector Campbell asked a couple of questions. I think it should be on page 9 of your copy.

Q. (By Mr. Long):

“Q. Did you see this land before the vessel struck Zayas Island?

A. Yes, sir.

Q. How did it bear?

A. It was on the port bow, sir.

Q. How do you account, Mr. Lawton, for the ship striking when you could see the land?

[2464]

A. Well, I don't know, sir, except for the tide, we seemed all clear, seemed to be in the middle of the channel”.

Did you or did you not so testify?

A. Yes, sir, I did as I recall it.

(Testimony of James B. Lawton.)

Q. And is it or is it not the fact?

A. That is the fact.

Q. Now, in connection with your answers to counsel's questions, about the vessel being late leaving Seattle, you were asked the question,

“Q. Was it behind time leaving Seattle?

A. Yes, she was a little late”.

Then did you in answer to the following question testified as follows,

“Q. Was that ship operated on a regular schedule?

A. No, sir.”

Is that correct, and did you so testify?

A. I believe that I recall that, sir.

Q. Well, what is the fact? Was the Steamer “Denali” on a regular schedule on this voyage?

Mr. Summers: That is not proper redirect, and I object to that.

The Court: If you know.

A. No, sir, it was not.

The Court: Objection overruled.

Mr. Summers: Exception.

The Court: Exception allowed.

At this time we will take the noon recess to 2:00 P. M.

(Whereupon an adjournment was taken at 12:00 M., November 10, 1937, to 2:00 P. M., November 10, 1937.) [2465]

(Testimony of James B. Lawton.)

Wednesday November 10, 1937,

2:00 o'clock P. M.

The Court: You may proceed with the trial. Let the witness Mr. Lawton resume the stand.

JAMES B. LAWTON

resumed the stand for further examination.

Mr. Ryan: If Your Honor please, counsel for Petitioner demanded the production of the protest on this vessel, and in response to that demand I now produce a duly certified copy, certified by the Notary Public who extended the protest, the original being required to be kept in the office of the Notary Public, and this protest having been made or extended on May 23, 1935, and having been, according to the Notary Public's certificate, signed by Thomas E. Healy, Master; G. W. Slater, Chief Engineer; W. Cleasby, Chief Mate; Frank Hoseth, Radio Operator; and J. B. Lawton, Third Officer.

Mr. Long: That is not the original.

Mr. Ryan: I just explained that I do not have the original. The original is in the possession of the Notary Public, and is required to be kept there. I have produced here a copy which has been duly certified by that Notary Public as being a true copy of the original on file.

The Court: The record will show the statements by counsel. You may proceed.

Mr. Ryan: I now offer in evidence the chart marked [2466] as Claimants' Exhibit A-11 for Iden-

(Testimony of James B. Lawton.)

tification, on which this witness, Mr. Lawton, marked the courses, and I ask that it be received in evidence as Claimants' Exhibit A-11.

The Court: With respect to that, and as I understand the testimony of the witness, the witness is now being inquired of about that on redirect examination. Do you have anything further?

Mr. Long: I think I have covered everything on redirect, Your Honor.

The Court: Very well. Are there any further questions to be propounded to this witness?

Mr. Ryan: No, I think not, Your Honor. I offer in evidence this chart on which the courses and positions of the "Denali" have been laid down by the witness, as Claimants' Exhibit A-11.

Mr. Long: I object to the offer, Your Honor, if it is meant to be shown by this chart, as according to counsel's present statement, that this chart indicates the position of the "Denali" at any time on this voyage, or at any other time. This exhibit simply indicates, without relation to current, tides, or the conditions then existing, purely the approximate line in accordance with the testimony of the witness here this morning. As I recall the matter, it eliminates the essential elements which are important in this case. Insofar as it illustrates exactly what the witness said, based upon the assumption that all the elements are not involved, I have no objection to it for that purpose.

Mr. Ryan: I disagree with the statement made

(Testimony of James B. Lawton.)

by [2467] Mr. Long. I merely want to describe what the chart is. I offer in evidence as Claimants' Exhibit A-11 this chart No. 2828, as marked on it by the Witness Lawton, and I call attention at this time to the fact that the definite position of the "Denali" at the time of the stranding is shown, and the definite position of the "Denali" at 1:30 o'clock a. m. is shown.

The Court: As I understand it, another chart of the same type has been already admitted in evidence.

Mr. Long: That is correct, Your Honor.

The Court: And the same number?

Mr. Ryan: It has the same number, but it has so many marks on it that I do not want to get the lines confused.

The Court: I was about to suggest that the only purpose that I know of for which it would be admissible in evidence, since you already have a chart drawn by the public authority promulgating it, in evidence, would be for the purpose of illustrating the testimony of the witness which he gave touching the matter or data on the map. That is one thing in connection with which its admissibility should be considered.

Mr. Ryan: That is what I am offering it for, Your Honor.

The Court: If that is the purpose of the offer the Court is ready to act upon it.

(Testimony of James B. Lawton.)

Mr. Long: I object to it on the further ground that it is incompetent, irrelevant and immaterial. We are not bound by anything shown on the chart. The questions involving the chart were propounded on a hypothetical [2468] presumption, of which there is no evidence before the Court.

The Court: Claimants' Exhibit A-11 is now admitted in evidence, to illustrate the testimony of the witness who identified it, and who put certain lines on it.

Mr. Long: Exception.

The Court: Exception allowed.

(Chart received in evidence Claimants' Exhibit A-11.)

Mr. Ryan: I want to ask the witness about that protest.

The Court: You may proceed.

Further Recross Examination

By Mr. Ryan:

Q. Did you or did you not, after first being duly sworn, sign this protest that I show you, on May 23, 1935, before Notary Public M. D. Calder, in the City of Seattle, Washington?

Mr. Long: I object to that as not proper cross examination, the original not being produced, under counsel's statement. I object to it as improper recross examination.

The Court: Counsel asked the witness if he signed that particular document.

(Testimony of James B. Lawton.)

Mr. Long: On counsel's own statement there are no signatures on it. This is a copy, if it is a copy.

Q. (By Mr. Ryan) Did you sign that document that I show you, that protest? Not is that your signature at the bottom but did you sign a document which read like that one [2469] right there, or not, under oath, on May 23, 1935?

A. I will answer the same as I answered before; I do not recall signing this or anything else, although I might have.

Q. You do not deny that you did sign it?

A. I do not recall it.

Q. But you do not deny that you did sign it?

A. No; I do not deny it; I do not remember it, that is all.

Q. Will you read it and does it refresh your recollection as to whether or not you made this statement to that Notary Public under oath?

Mr. Long: I object to that as improper redirect examination, Your Honor.

The Court: That objection is overruled.

Mr. Long: It is further objected to on the ground that this is not the original document, and does not purport to be.

The Witness: I am sure I never read anything like that, if that is what you wish.

Q. Do you deny that you stated to the Notary Public, M. D. Calder, in Seattle, on May 23, 1935, the facts that are recited in that protest, over your purported signature?

A. I do not deny it, but I do not recall this article.

(Testimony of James B. Lawton.)

Q. And reading it doesn't refresh your recollection, is that right?

A. No, sir; it does not.

Q. I call your attention particularly to the top of page 2, the first four or five lines, and ask you whether you made those statements of fact to that Notary Public, M. D. Calder on May 23, 1935, in Seattle, under oath? [2470]

A. No, sir; I do not remember that.

Q. Those purport to be statements of fact as to what happened while you were on watch on the bridge of the "Denali", do they not?

A. No.

Mr. Long: I object to counsel testifying, and I have already objected to this document. The original has not been produced, according to my demand. If it is in Seattle it can be produced.

The Court: I think you ought to produce the original, Mr. Ryan, or show some reason why it is not produced.

Mr. Ryan: If the Court please, it is not in my possession, it is not under my control. This protest was extended by their own officers of this ship, and how can they demand the production of it by me, a document that they extended before a notary. They can go to the notary public and get it. Mr. Bogle has taken it and examined it, and shown it to somebody in the back of the room, looked it over, and on that basis, and they having demanded that

(Testimony of James B. Lawton.)

it be produced, and they now having examined it, I offer it in evidence.

Mr. Long: We object to it as incompetent, irrelevant and immaterial.

The Court: For the purpose of the record do you wish to have it marked, Mr. Ryan?

Mr. Ryan: Yes; I ask that it be marked as Claimants' Exhibit A-12.

(Protest marked for identification Claimants' Exhibit A-12.) [2471]

Mr. Long: I also wish to call Your Honor's attention to the following, in connection with my objection, that the certificate mentions nothing about Mr. Lawton, but refers all the way through to T. E. Healy, the master of the "Denali" on May 23, 1935, and that is the only signature on here.

Mr. Ryan: May I reply to that statement by reading the first page?

The Court: Well, Mr. Ryan—

Mr. Ryan: (Interposing) Well, Your Honor, I do not like to have that statement in the record.

The Court: The statement will be stricken, and the matter will be disposed of on the basis that it is a copy.

Mr. Ryan: A copy certified to by the notary public who extended it, on request of the Petitioner's own officers.

The Court: The objection to its admission in evidence is sustained.

(Testimony of James B. Lawton.)

... Mr. Ryan: Exception.

The Court: Exception allowed; and the offer of it at this time is denied.

Mr. Ryan: In view of that may I ask the witness one question?

The Court: Yes.

Q. (By Mr. Ryan) Did you or did you not, on May 23, 1935, in Seattle, after having been first duly sworn to tell the whole truth, state to M. D. Calder, a Notary Public, in Seattle, Washington, as follows—

Mr. Long: Just a minute, please.

Mr. Ryan: I am just going to read it. [2472]

The Court: Mr. Ryan, that has been already been gone into, and when the original demand was made upon you it was made in connection with something that is very much like what you are now trying to do.

Mr. Ryan: I am just laying the foundation for impeaching the witness by the notary public. I am just asking whether on that date he did not make this statement under oath to this man, in Seattle, and if he denies it I am going to prove that he is not telling the truth.

The Court: Haven't you asked him that before?

Mr. Ryan: Not that particular question.

Mr. Long: I submit that he has, and the witness has said at least ten times that he doesn't remember making the statement.

(Testimony of James B. Lawton.)

The Court: I am going to give Mr. Ryan the benefit of this doubt, and I will let him ask the witness the question.

Q. (By Mr. Ryan) On May 23, 1935, after being first duly sworn to tell the whole truth, did you not state to M. D. Calder, a notary public in City of Seattle, as follows:

“At 2:37 A. M. the south end of Zayas Island was abeam. Northerly wind force 2 prevailed, atmosphere hazy. At 2:44 A. M. the vessel suddenly struck a reef running out from Zayas Island about three-quarters of a mile. Engines were stopped but were immediately run full astern in an effort to free the vessel. She would not move.”

Did you or did you not so state, under oath?

A. I do not recall that, or any other part of that.

Q. Do you deny that you stated that under oath at that [2473] time to the notary public?

A. I say I don't recall.

Mr. Long: I submit that is not inconsistent, Your Honor, and he cannot be impeached. He so testified here today and yesterday.

The Court: The record will stand as made. Does this complete the examination of this witness?

Mr. Ryan: Yes, Your Honor.

The Court: You may be excused from the stand, Mr. Lawton. Call your next witness.

Mr. Long: We will call Mr. Tell.

(Witness excused.)

EMIL TELL

called as a witness on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. Long:

Q. Will you state your full name to the Court, please?

A. Emil Tell.

Q. Where do you live, Mr. Tell?

A. Gatewood Hotel, Seattle, Washington.

Q. What is your business or occupation?

A. Seaman.

Q. Do you hold any certificate issued by the Department of Commerce, United States Steamboat Inspection and Navigation Service?

A. A. B. and lifeboat certificate.

Q. How many years have you been going to sea?

[2474]

A. 30 years.

Q. Briefly, what has your sea experience been, Mr. Tell?

A. Sailing vessels and steamships.

Q. How many years have you been serving as quartermaster on ships, steering ships?

A. 25 years.

Q. Have you had any service in Alaskan waters as quartermaster or helmsman on vessels?

A. About nine years.

Q. Were you a member of the crew of the steamship "Denali" in 1935?

(Testimony of Emil Tell.)

A. Yes, sir.

Q. In what capacity were you a member of her crew?

A. A. B.

Q. When and where did you join the vessel?

A. In Seattle.

Q. Where was the ship when you joined her?

A. West Seattle.

Q. Do you remember the date?

A. The 13th of May.

Q. What time of day?

A. 6:00 a. m.

Q. Who sent you to the vessel?

A. From the Sailors' Union hall.

Q. Are you a member of the Sailors' Union of the Pacific Coast?

A. Yes, sir.

Q. During the time that the vessel shifted around the harbor in Seattle did you at any time act as quartermaster and helmsman? [2475]

A. Yes; from the coal bunkers over to the oil dock.

Q. What sea watch did you have on the ship?

A. From 12:00 midnight, until 4:00 in the morning, and 12:00, noon, until 4:00 in the afternoon.

Q. How many hours a day were you on duty?

A. Eight hours.

Q. Do you remember the date those sea watches were set?

A. At 8:00 o'clock in the morning, May 16th.

(Testimony of Emil Tell.)

Q. Do you recall the date that the vessel sailed from Seattle?

A. At 6:45 a. m., on the 16th.

Q. Now, when did you first go on duty on the 16th, Mr. Tell?

A. When we left the dock.

Q. What were your duties at that time?

A. Securing the gear, deck gear, and the deck load.

Q. When on May 16th did you go on wheel watch, as helmsman of the ship?

A. At 12:00, noon.

Q. You stand a four-hour watch twice a day, as I understand your testimony?

A. Yes.

Q. Is that four-hour watch divided in any way?

A. Two hours apiece at the wheel.

Q. Do you have a watch partner?

A. Yes. [2476]

Q. During the day time what did you do in your other two hours on the watch? When you were not on the wheel—on the day watch?

A. I did ship's work.

Q. You did ship's work?

A. Yes, sir.

Q. At night what did you do on the two hours that you were not at the wheel?

A. Stood look-out.

Q. Now, during the time that you were at the wheel as helmsman on the Steamer "Denali" dur-

(Testimony of Emil Tell.)

ing your voyage to Alaska tell us, if you will, how the vessel steered?

A. She steered good.

Q. What can you say as to the compass that you were looking at—the steering compass or the pilot house compass?

A. She was in perfect order.

Q. Did you observe any defects in the compass?

A. No.

Q. Tell us what the condition of the compass card was as you saw it—card was as you saw it—was it clear or dull or bright, or how?

A. The face of it, you mean?

Q. Yes, the compass card.

A. Yes, sir, she was clear.

Q. Were there any bubbles in the compass that you could see?

A. No.

Q. How was the steering or pilot house compass card marked—in points or degrees?

A. Degrees and points.

Q. Both? [2477]

A. Yes.

The Court: Let your answer be audible so that all persons can hear you.

A. Yes.

Q. Now, what time did you get on watch on the early morning of May 19th?

A. 12:00 midnight.

(Testimony of Emil Tell.)

Q. And from 12:00 midnight until what time—until 2:00 o'clock what did you do?

A. Stood lookout.

Q. And after 2:00 o'clock what were your duties?

A. At the wheel.

Q. As helmsman?

A. Yes, sir.

Q. Is that also referred to as quartermaster?

A. Well, yes.

Q. Now, when you came on watch at 2:00 A. M. at the wheel, tell us what you did before actually coming up to the bridge?

A. I read the log at 2:00 o'clock, or a little before 2:00—a minute or two before.

Q. When you speak of "the log" what do you refer to?

A. To the patent log.

Q. Also called the taffrail log?

A. Yes, sir.

Q. And to whom did you give the log reading?

A. I reported it to the third mate.

Q. And who was the third mate?

A. Mr. Lawton.

Q. And who else was on watch at that time?

[2478]

A. Pilot Obert.

Q. By the way, had you ever sailed with Pilot Obert before on other ships, or on this ship?

A. Yes, I have, on other ships.

Q. Did you ever sail with Mr. Lawton before?

(Testimony of Emil Tell.)

A. Yes.

Q. Now, while on look-out, and at approximately 1:45, what, if any, land could you see?

A. I could see land on either bow.

Q. Do you know what land that was?

A. Yes.

Q. Tell us.

A. Dundas Island on the starboard side and Zayas Island ahead.

Q. What time did you leave the look-out, approximately?

A. At ten minutes to two.

Q. And what time did you arrive in the wheel house to take over your watch on this occasion?

A. Two o'clock.

Q. Did you relieve anybody at the wheel?

A. I relieved by partner who was at the wheel from twelve to two.

Q. Approximately what was the visibility while you were on lookout, and just before you left the lookout, around ten minutes to two?

A. A little hazy on the shore line.

Q. Had you seen any lights while you were on lookout from twelve to two?

A. No, sir.

Mr. Ryan: What was the answer. [2479]

A. No, sir.

Q. (By Mr. Long) Do you know what I refer to when I say "lights"?

(Witness does not answer)

(Testimony of Emil Tell.)

Q. Had you seen any lighthouses; let us put it that way.

A. I didn't see any while I was on the lookout.

Q. Well, did you see any when you read the log?

A. Yes, sir.

Q. Do you know what light you saw?

A. Triple Island Light.

Q. Which side of the vessel was it on?

A. On the starboard side.

Q. Now, when you took over the wheel as quartermaster or helmsman at 2:00 o'clock what course was the vessel steering by pilot house compass?

A. North.

Q. From whom did you receive that course?

A. From the man that I relieved.

Q. What, if any orders did the pilot or third mate give you with reference to the course at that time?

A. He gave them the course after he gave it to me. He repeated the course to the third mate.

Q. Who repeated the course to the third mate?

A. The man that I relieved.

Q. Well, what, if anything, did Pilot Obert or Mr. Lawton tell you with reference to the course when you took over the wheel?

A. Nothing.

Q. How long did you steer that course North?

A. Twenty-five minutes. [2480]

(Testimony of Emil Tell.)

Q. During that time did—what could you see ahead—what land, if any, could you see ahead?

A. I could see Zayas Island.

Q. And how did it bear, approximately?

A. Oh, heading like the inshore line—the inshore coast—the east side of Zayas Island.

Q. What other land could you see?

Mr. Ryan: Will you read that last answer?

(Answer read as follows:

“Oh, heading like the inshore line—the inshore coast—the east side of Zayas Island”.)

Mr. Long: Will you speak up a little louder, Mr. Tell?

The Court: The first two words in that statement were what?

(Answer re-read)

The Court: “Like” is the word, is it not?

The Witness: Yes, like the inshore line.

Q. (By Mr. Long) I will ask you another question, Mr. Tell, so that it will be clear. At that time how did Zayas Island bear, if you know? Just describe it in your own words.

A. She was heading for the east coast or east shore line of Zayas Island.

Q. Very well. What other land could you see?

A. Dundas Island.

Q. Could you see the channel between the two islands?

A. Yes, sir.

Q. At 2:00 o'clock when you came on watch, how was the ship heading with reference to the channel between the two [2481] islands, as you recall?

(Testimony of Emil Tell.)

A. She was heading for the east side of Zayas Island.

Q. All right. Now, you steered that North course twenty-five minutes, you say?

A. Yes, sir.

Q. What, if any, orders did you receive from the pilot at about 2:25?

A. To port the helm to make the swing shift to the right.

Q. Which way with relation to the east and west?

A. East.

Q. Just tell us in your own words just what the pilot said and what you did.

A. He told me to port, and I turned the wheel to port, the ship swinging to the right, and he said, "Steady", and I steadied her up on North $\frac{3}{4}$ East.

Q. Did Mr. Obert at that time or at any other time give you any magnetic course to steer?

A. No.

Q. Did any other officer—Mr. Lawton?

A. No.

Q. What was the pilot doing?

A. He was standing at the window on the port side of the pilot house.

Q. After you made this change to the right, steadied the course and steadied the heading, what was the heading by pilot house compass?

A. North $\frac{3}{4}$ East.

(Testimony of Emil Tell.)

Q. Now, returning again to 2:00 o'clock, while you were on the north course—on the north heading, tell us what, if anything, was done by the third officer? [2482]

A. He was checking the course at 2:00 o'clock.

Q. When you say that he was checking the course at 2:00 o'clock, what do you mean?

A. He went on top and checked it by the standard compass, and knocked when he was on, and I knocked when I was on. I repeated the knock.

Q. Is that the customary method and practice of checking the compasses or conning the compasses as it is called?

A. Yes, sir.

Q. Now, at that time did Mr. Obert give Mr. Lawton any orders with reference to entering that north heading in the log book in your presence?

A. Yes. The third mate asked him if he should enter that course in the log book, and the pilot said, "No".

Q. Very well. Now, about 2:25, when the vessel's head was all to the right, or eastward, tell us what, if any, orders the pilot gave the third mate with reference to making any entries in the log book?

A. He told him to take—to stand by and take a bearing off the south end of Zayas Island.

Q. All right. What was done?

A. Well, he sent a man back aft to stand by the log, and he took the bearing of Zayas Island.

(Testimony of Emil Tell.)

Q. At the time that that bearing was taken, Mr. Tell, what was the ship's heading?

A. North $\frac{3}{4}$ East.

Q. Can you recall about what time that was?

(Witness does not answer)

Q. Can you recall about what time that was that the bearing was taken? [2483]

A. Oh, about 2:25, I guess—somewhere around there.

Q. By the way, Mr. Tell, how did you fix the time when the ship was hauled to the right, or to the eastward $\frac{3}{4}$ of a point, or around to the north $\frac{3}{4}$ East?

A. At 2:35.

Q. I say, how did you fix that time, or do you fix that time?

A. Well, the third mate was still up checking her run, and we struck five bells.

Q. And what are five bells?

A. 2:30.

Q. Had you already made the swing before the third mate went up to check her run?

A. Yes.

Q. After the bearing was taken from Zayas Island what occurred? What did you do, or what did the ship do?

A. She took a swing to the right about three-quarters of a point.

Q. From what cause?

A. From the current.

(Testimony of Emil Tell.)

Q. And what did you do?

A. I brought her back again to her course.

Q. And what was her heading at that time, after you brought her back?

A. North $\frac{3}{4}$ East.

Q. And what happened after that?

A. She hit.

Q. Do you know what time—do you know about what time she struck?

A. 2:44. [2484]

Q. Now, Mr. Tell, after the ship had been swung to the right and steadied on North $\frac{3}{4}$ East, tell us, if you will, how the ship appeared to be heading with reference to Zayas and Dundas Islands, and the channel between the two.

A. She appeared to be in mid-channel.

Q. What could you see of Zayas Island at about that time?

A. Well, Zayas Island was on her starboard bow then.

Q. Zayas Island?

A. On her port bow, I mean.

Q. Yes.

A. I beg your pardon.

Q. Where was Dundas Island?

A. On the starboard, sir.

Q. What would you say as to the visibility at about that time?

A. The visibility was good ahead, but hazy along the shore lines.

(Testimony of Emil Tell.)

Q. Now, from the time that you came on watch, Mr. Tell, until the time that the vessel struck, what, if any, orders or magnetic courses did the pilot give you to steer?

A. None.

Q. What was he doing during that period with reference to navigation of the ship?

A. He was piloting the ship.

Q. Were you steering any magnetic course given you by the pilot?

A. No, sir. But I had to have something to go by.

The Court: What was your answer? [2485]

A. No, sir.

The Court: Then you added something.

A. Yes. When he tells me to port the wheel and he says, "Steady", well, I have to have something to go by in order to steer the ship.

The Court: All right. Ask him another question.

Q. (By Mr. Long) Now, at the time that the vessel's head was swung to the right, say about 2:25, what, if any, conversation was had between the third officer and the pilot relative to this entry of North $\frac{3}{4}$ East in that book?

A. The third mate asked the pilot again.

Q. Yes.

A. If he should make an entry in the log book, and the pilot said, "No".

(Testimony of Emil Tell.)

Q. Now, Mr. Tell, did you make any written memorandum of the course of the ship's headings from the time that you steered, when you came on the ship's watch, until the time of the stranding?

A. I did.

Q. When?

A. Immediately after I left the pilot house.

Q. When--where did you make it?

A. In my union book.

Q. Have you got that here and can you produce it?

A. Yes (handing book to Mr. Long).

Mr. Long: Will the clerk mark this with a number? Also put a couple of rubber bands around those pages because they are worn. [2486]

(Emil Tell's union book marked for identification Petitioner's Exhibit 60.)

Mr. Ryan: May I see it?

Mr. Long: As soon as I have identified it.

Mr. Ryan: You have shown it to the witness.

Mr. Long: I have not shown it to him. He handed it to me. I will have it identified for counsel.

Q. (By Mr. Long) Handing you—

Mr. Ryan: (Interposing) If Your Honor please, in view of the fact that the witness has seen it, and he is being examined from it, may I examine it first?

Mr. Long: I am going to identify it first.

(Testimony of Emil Tell.)

The Court: You may not see it until after counsel gets through interrogating the witness concerning it. After that you may see it, Mr. Ryan.

Q. (By Mr. Long) Handing you, Mr. Tell, what has been marked Petitioner's Exhibit 60 for identification, I will ask you, first, what is this?

A. This is my union book.

Q. And in whose handwriting is it?

A. Mine.

The Court: Meaning your handwriting?

The Witness: Yes, sir.

The Court: Is that what you mean?

The Witness: Yes, sir.

The Court: Then whose book is it?

The Witness: It belongs to me.

Q. (By Mr. Long) What book is it? Can you identify the book?

A. Yes, by my name. [2487]

The Court: He means to ask you what kind of a book it is. What do you call it?

The Witness: A union book.

The Court: All right.

The Witness: A membership book of the union.

Q. (By Mr. Long) Does it bear your name and signature?

A. Yes.

Q. Does it bear the seal of the International Seamen's Union of the Pacific?

A. Yes, sir.

(Testimony of Emil Tell.)

The Court: Direct his attention to what you want to ask him from that book.

Mr. Long: I will.

Q. (By Mr. Long) I notice here some writing (indicating). Whose writing is that?

A. That is my writing.

Q. When was that made?

A. Immediately after I left the pilot house.

The Court: There was some question answered at the very beginning, before he took this book out of his pocket. Why do you not get right at that if what you are doing now is to authenticate—is asking him questions for the purpose of authenticating the data—the written data?

Mr. Long: Yes.

The Court: In other words, proceed and get at it quickly.

Mr. Long: Yes, I will, Your Honor.

Q. (By Mr. Long) You say that this was made immediately after you left the pilot house? [2488]

A. Yes, sir.

Q. How soon was that after the vessel struck?

A. I cannot say for sure.

Q. Why did you make those entries in this book?

A. Because the third mate asked the pilot if he should enter in the log book, and he said "No", and it was not done.

Q. How do you know that it was not done?

A. Well, he told him not to do it.

(Testimony of Emil Tell.)

Q. What are these entries in your handwriting? Will you read them off, please?

The Court: He should read them to himself because this book is not yet in evidence.

Mr. Long: All right, Your Honor.

Q. (By Mr. Long) Read it to yourself.

A. Yes, I have.

Mr. Long: I now offer the book in evidence, Your Honor.

The Court: Will you let counsel have a chance to inspect it?

Mr. Long: Yes. I now offer in evidence Petitioner's Exhibit 60.

Mr. Pellegrini: While we are examining the book he might go on asking further questions.

The Court: I would prefer to give you further time to examine it, Mr. Pellegrini.

Mr. Ryan: If the Court please, the witness has been already asked what his knowledge was, and his recollection, and he has given it freely without reference to the book, so that the book is in no sense necessary to [2489] aid him in refreshing his recollection.

Mr. Long: I will ask him a further question.

Mr. Ryan: And it is objected to on the ground that it is a self-serving declaration—a statement not made by a person authorized to bind or represent the petitioner, and on the further ground that if this is any contemporaneous, written record, it should have been produced when counsel for peti-

(Testimony of Emil Tell.)

tioner was directed by the Court to produce the memorandum at the time, and records at the time regarding the movements of this vessel as shown in any books within their possession or control.

The Court: Before ruling finally on the objection, the Court sees nothing in the evidence that makes its admission material or proper at this time.

Mr. Long: I feel, Your Honor, that it is part of the immediate transaction—part of the *res gestae* of this whole circumstance.

The Court: I do not know of anything that gives you the right to have it admitted in evidence.

Mr. Long: Well, I will ask him some further questions.

The Court: Proceed.

Q. (By Mr. Long) Have you refreshed your recollection from this particular book and notes made at the time?

Mr. Ryan: I object to that. The witness has been asked the direct questions as to what course he had been steering, and he has given the magnetic. He has not referred to the book at all.

The Court: Objection sustained. [2490]

Mr. Long: I feel, Your Honor, that this—

The Court: (Interposing) Ask him a question and see if he can answer it.

Mr. Long: I have not done it—

The Court: (Interposing) Ask him a question which is material in this case—material on the petitioner's case—material in connection with the exam-

(Testimony of Emil Tell.)

ination of this witness. It may be that the witness does not need this document in that connection at all. If you have any further questions on direct examination to propound to him, proceed.

Mr. Long: All right, and I want this book admitted in evidence, if Your Honor please, and I have laid the foundation for doing so.

The Court: The offer is denied.

Mr. Long: Then I desire to make an offer of proof.

The Court: Proceed.

Mr. Long: Preliminary to that I want to ask two or three questions.

The Court: Proceed.

Q. (By Mr. Long) When were these entries made, Mr. Tell?

Mr. Ryan: That has already been answered.

A. Immediately after I left the pilot house.

The Court: Objection sustained.

Q. (By Mr. Long): Are they in your own handwriting?

A. Yes, sir.

The Court: That has already been covered.

Mr. Long: All right, Your Honor.

Q. (By Mr. Long): Have you used your book to refresh your mind as to how this accident happened? [2491]

A. No, sir.

Mr. Long: I now offer this Petitioner's Exhibit 60 in evidence, if Your Honor please.

Mr. Summers: I object to that.

(Testimony of Emil Tell.)

The Court: The objection is sustained and the offer is denied.

Mr. Long: Exception.

The Court: Exception allowed.

Mr. Long: I want to make an offer of proof, if Your Honor please.

The Court: That is a different matter. You offered the exhibit in evidence.

Mr. Long: I understand that Your Honor has ruled, and I want to except to Your Honor's ruling at this time, and I want to make an offer of proof concerning it.

The Court: Exception allowed, and you may now make your offer of proof.

Mr. Long: At this time, with the witness Emil Tell on the stand, and under the circumstances heretofore related, the petitioner offers in evidence, and offers to prove by this witness that immediately following this accident, as a part of the *res gestae* of this transaction, he made these entries in his own handwriting, the entries being as follows:

“Steering from 2:00 to 2:25 North; from 2:25 to 4:44 North $\frac{3}{4}$ East, compass bearing North half East”.

In connection with that offer of proof I also want to ask the witness whether I have read these memoranda correctly. Have I, Mr. Tell? [2492]

Mr. Summers: I object to that.

(Testimony of Emil Tell.)

The Witness: Yes, sir.

Mr. Summers: That is not proper on the offer. That is going around the Court's ruling—disobeying the Court's ruling.

Mr. Long: I am not trying to disobey the Court's ruling. I think the Court should have this before him.

The Court: That objection is overruled, but if you are offering that written evidence which you have just now read, as your offer of proof, at this time——

Mr. Long: (Interposing) Correct.

The Court: (Continuing) At this time such offer of proof is denied by the Court.

Mr. Long: To which may we have an exception, Your Honor?

The Court: Exception allowed, without, however, ruling, or intending to rule upon your asking this witness any particular question on direct examination which is material to the petitioner's case.

Mr. Long: Well, I will continue with that then.

The Court: Proceed.

Q. (By Mr. Long) What, Mr. Tell, was the ship's head after she struck the reef—what was her heading?

A. North $\frac{1}{2}$ East.

Q. Now, from the time that you came on watch, at 2:00 A. M., until the time that the vessel struck, tell us whether or not the pilot at any time ever

(Testimony of Emil Tell.)

looked into the compass—the steering compass—in your presence?

A. No.

Mr. Long: I believe that is all, Your Honor.

[2493]

The Court: You may cross examine.

Cross Examination

By Mr. Ryan:

Q. You were examined as a witness by the United States Steamboat Inspectors at the investigation of this case on May 24, 1935, were you not?

A. Yes, sir.

Q. You did not tell the Steamboat Inspectors anything about the “Denali” being on a heading of North $1\frac{1}{2}$ East, or North $\frac{3}{4}$ East, at the time of the stranding, did you?

A. I did not.

Q. You never told the Steamboat Inspectors at that time anything about this book which you say that you made a memorandum in at the time, did you?

A. No.

Q. You never told the Steamboat Inspectors at that time anything about these courses that you knew in fact the “Denali” was steering from 2:00 A. M. to 2:44 A. M. on May 19, 1935, did you?

A. No.

Q. Why didn't you?

A. I wasn't asked.

Q. That is your only explanation?

(Testimony of Emil Tell.)

A. Yes, sir.

Q. All right. Now, you say that you had to have something to steer by. What do you mean by that?

A. Steer by a compass.

Q. Why, certainly. You have to have the compass to steer by, don't you? [2494]

A. That was with reference to that statement—well, I don't know just what it was with reference to——

Q. (Interposing) Certainly.

A. (Continuing)—that Mr. Long made.

Q. So whenever the order was given to steady her, you steadied her on the compass course that was marked on the compass right in front of you, didn't you?

A. The pilot would know that.

Q. Well, wouldn't you?

A. Yes, sir.

Q. In other words, you were relying absolutely on the compass at all times until the ship actually struck the reef, weren't you?

A. Yes, sir.

Mr. Long: What was that answer?

The Witness: Yes, sir.

Q. (By Mr. Ryan) That is the only thing that you have to steer by, a definite compass course with the lubber's line there in front of you, isn't that right?

A. Yes, sir.

(Testimony of Emil Tell.)

Q. And at 2:00 o'clock the helmsman whom you relieved told you that the ship was steering a course North, didn't he?

A. Yes, sir.

Q. By the compass that you were using right in front of you?

A. Yes, sir.

Q. And you continued on that course, North, by compass until 2:25 A. M., didn't you?

A. Yes, sir.

Q. And then you changed the course and steered a course [2495] North $\frac{3}{4}$ East from 2:25 up until 2:44 A. M., when the vessel struck the reef, didn't you?

A. Yes, sir.

Q. So that at all times you were steering a compass course, weren't you?

A. Yes.

Q. You were not just trying to keep in the middle of the channel. You were trying to keep on the compass course on which you had been told to steady when the pilot told you to steady, isn't that right?

A. Yes, that is right. [2496]

Q. (By Mr. Ryan) Wasn't the compass of the "Denali" slow in answering when you made a turn?

A. No, sir.

The Court: The answer was "No", as I understand it. Am I correct?

The Witness: Yes, sir.

(Testimony of Emil Tell.)

Q. Wasn't the "Denali" steering a little slow?

A. She was slow coming back, if she went over, like in tide-rips.

The Court: "Like in tide-rips", is that what you said?

The Witness: Yes, sir.

Q. You never took the compass apart or examined it, or made any examination of it, did you?

A. No.

Q. Did you or did you not testify before the United States Steamboat Inspectors, at the investigation on May 24, 1935, in Seattle:

"Q. In your experience as helmsman would you say that the 'Denali' was steering or answering its helm as it should?

A. Yes. She was a little slow."

Did you so testify?

A. I did.

Q. What did you mean by "a little slow" when you gave that testimony?

A. I explained that a little while ago.

The Court: Explain it again.

The Witness: She was slow at times, in tide-rips.

The Court: In tides and tide-rips?

The Witness: In tide-rips. [2497]

Q. You didn't say anything about that to the Steamboat Inspectors, did you, that she was only slow in tides and tide-rips?

A. No.

(Testimony of Emil Tell.)

Q. Why didn't you?

A. That is all they asked me.

Q. They asked you just generally how she steered, and you said she was a little slow, you just generalized it all the time, and now you limit it to tide-rips, and I want to know why you are now trying to limit it to tide-rips when you didn't do it before the Steamboat Inspectors.

A. I was referring to that.

Q. But you didn't tell them so?

A. No, sir.

Q. How far, in your opinion, could you really see when you were steering the "Denali"?

A. I couldn't tell.

Q. Do you know what course by standard compass the "Denali" was steering?

A. No.

Q. Do you know what course by steering compass the "Denali" was steering at any time excepting the times you have testified to here?

A. I don't recall the courses. I was steering before.

Q. Did anybody ever tell you what courses the "Denali" was steering by either standard or steering compass?

A. No.

Q. Was there any sea running when this accident happened?

A. No.

Q. It was pretty smooth, wasn't it? [2498]

(Testimony of Emil Tell.)

A. Yes, sir.

Q. Do you mean to say that you saw the land before this vessel struck the reef?

A. Yes, sir.

Q. Did you or did you not testify under oath before the United States Steamboat Inspectors at Seattle, on May 24, 1935, at page 16 of the official transcript, as follows:

“Q. Nobody saw the land before this vessel struck, and yet it was clear?

A. No.”

Did you so testify under oath?

A. I did.

Q. What did you mean by that?

A. Meaning I couldn't see the rock.

Q. The question was “Nobody saw the land before this vessel struck”.

A. That is what I was referring to, the land we hit.

Q. But you didn't tell them that, did you, when you were asked the question?

A. I wasn't asked.

Q. It was hazy at the time of the stranding, wasn't it?

A. Along the shore lines.

Q. Were you or were you not asked the following question, and did or did you not give the following answer, on May 24, 1935, when examined as a witness by the United States Steamboat Inspectors:

(Testimony of Emil Tell.)

“Q. Did you notice the visibility then?

A. Yes. It was a little hazy.”

Did you so testify?

A. I did. [2499]

Q. You didn't say anything about the shore line there, did you, limiting it to the shore line?

A. Well, it was so far away from the land then.

Q. Your memory was better then, just a few days after the stranding, than it is now, more than two years later?

A. Oh, about the same.

Q. How do you account for the fact you didn't mention it was only a little hazy along the shore line and not just hazy generally, as you testified there?

A. You could see the haze along the shoreline more than you could other places.

Q. Why didn't you tell the Steamboat Inspectors the haze was only along the shoreline, and not generally?

A. I just answered the question. I wasn't asked that.

Q. They asked you if you noticed the visibility then, didn't they?

A. Yes.

Q. Do you know what caused this accident?

A. No.

Q. Have you any idea?

A. I know now.

Q. From what Mr. Long has told you?

A. No.

(Testimony of Emil Tell.)

Q. Now, did you or did you not testify before the United States Steamboat Inspectors at Seattle on May 24, 1935, at the investigation of this case, page 16 of the official transcript:

“Q. Now, Mr. Tell, the Board, referring to your years of experience as a sailor, would like to get from you an honest opinion as to what caused [2500] this accident.

A. I have no idea.”

Did you or did you not so testify?

A. I did.

Q. Did they not further ask you at that time, and did you not say under oath:

“Q. Do you really and sincerely mean that you are not saying that, because you hesitate?

A. No, sir.”

Did you or did you not so testify?

A. I did.

Mr. Long: I do not see where that is inconsistent.

The Court: The objection is overruled.

Mr. Long: May I have the privilege of reading the rest of it?

The Court: I will rule upon the request when it is made at the proper time.

Q. (By Mr. Ryan) Did the watch officers on the “Denali” attend faithfully to their duties when you were helmsman on the “Denali”?

A. Yes, sir.

(Testimony of Emil Tell.)

Q. Then you do not know what caused this accident?

A. No.

Q. Your story now is that they were not making entries in the log book properly, and you knew that at the time, didn't you?

A. I did.

Q. Why didn't you tell the Steamboat Inspectors about that?

A. They didn't ask me that.

Q. You didn't think those questions called for you to dis- [2501] close the full truth?

A. No, sir. I am not a licensed officer.

Q. Do you know a former seaman named Paul Rains?

A. I do.

Q. On or about September 7, 1935, in the afternoon, on board the Steamship "Dellwood", in Seattle, did you or did you not have a conversation with Paul Rains regarding the cause of the "Denali" stranding, in which you said, in substance, "The God-damned compass hadn't been tested for deviation for three years, and that is what put her on the beach." Did you or did you not so state?

A. I don't recall that at all.

Q. Do you deny that you stated that?

A. I don't remember talking to him.

Q. Do you deny that you stated that to Paul Rains on the afternoon of about September 7, 1935,

(Testimony of Emil Tell.)

on board the Steamship "Dellwood", on her arrival in Seattle from her voyage?

A. No; I don't remember making a statement like that to him.

Q. Do you deny that you made it?

A. I don't remember making it.

Q. But you do not deny it?

A. I don't remember making it.

Q. But you do not deny it?

A. If I don't remember it I can't deny or admit anything.

Q. How long have you lived at the Gatewood Hotel?

A. Oh, since May—since June, rather.

Q. Since June of what year?

A. This year.

Q. When was the last time you went to sea?

[2502]

A. In May.

Q. Of what year?

A. This year.

Q. How much more than regular seaman's wages are you being paid by the Alaska Steamship Company?

A. Just regular wages.

Q. How much are you receiving a month from the Alaska Steamship Company?

Mr. Bogle: If Your Honor please, I shall object to that as not proper cross examination.

The Court: The objection is overruled.

The Witness: Regular wages, and my room and meals.

(Testimony of Emil Tell.)

Q. How much money in cash do you receive every month from the Alaska Steamship Company?

A. Oh, I will have to figure that out.

The Court: If you can approximate it, Mr. Tell, will you kindly do so at this time.

The Witness: About \$120.

Q. (By Ryan) Is it not a fact that you receive \$180 for each and every month from the Alaska Steamship Company, right now?

A. Not \$180, no.

Q. How much?

A. I told you.

Q. \$120 a month, and for how long have you been receiving that from the Alaska Steamship Company, without any service on board a vessel?

A. Will you read that again? (Question read.) Since June.

Q. June of what year?

A. This year. [2503]

Q. You stated something about the ship taking a swing or something to the right from current; when did that occur?

A. Oh, about seven to ten minutes before we hit.

Q. And you even have it in quarters of a point, haven't you?—Did you make any record of that at the time?

A. I was looking at the compass.

(Testimony of Emil Tell.)

Q. Did you make any record of it, is the question?

A. No, sir.

The Court: Did you put that down in writing in any book of record?

The Witness: No, sir.

Q. Did you ever mention that three-fourths of a point at any time to anybody?

A. No. I just know she made a swing to the right.

Q. Did you at all times steer this "Denali" properly?

A. Yes, sir.

Q. You had no difficulty at all steering her?

A. No.

Q. Where did you stand lookout between midnight and 2:00 a. m.?

A. On the bridge.

Q. You didn't stand it on the fore-castle head?

A. No.

Q. Who read the patent log at 1:00 a. m., if anybody, on May 19th?

A. I did.

Q. You read it?

A. Yes, sir.

Q. Who read the patent log at 2:00 a. m., if anybody, on May 19th? [2504]

A. I did.

Q. Who read the patent log at 2:37 a. m. on May 19th, if anybody?

(Testimony of Emil Tell.)

A. I don't know.

Q. Do you know whether it was read at that time?

A. I couldn't say.

Q. Now, at 2:00 a. m., when you read the patent log, what course was the "Denali" on, on May 19th?

A. It was on North when I relieved the man at the wheel.

Q. What entry was made in the log book as to the course the "Denali" was on at that time?

A. There wasn't any made.

Q. The third mate has testified that he made an entry that the course at that was North $\frac{3}{4}$ West, that is the way he entered it in the log book, by the steering compass, and also by the standard compass. Did you know that that entry was made in the log book?

A. I don't know.

Q. If that entry was made it was false, isn't that right?

A. I didn't see anybody make any entry.

Q. That entry if made in the deck log book of the "Denali" at 2:00 a. m., May 19, 1935, log and course noted at 2:00 a. m., pilot house compass, North $\frac{3}{4}$ West, and bridge compass North $\frac{3}{4}$ West, is that correct or false, in fact?

A. I guess it is correct.

Q. Then how do you reconcile that with your testimony today, for the first time, that the ship was

(Testimony of Emil Tell.)

at that time steering a course other than North $\frac{3}{4}$ West?

A. Mr. Obert was piloting. [2505]

Q. Is that your only explanation?

A. Well, yes. I am not acquainted with navigation.

Q. Well, that entry in that log book is false, isn't that right?

A. I don't think so.

Q. You think the entry in the log book that at 2:00 a. m., May 19th, 1935, the "Denali" was steering a course by bridge compass North $\frac{3}{4}$ West, and by the pilot house compass North $\frac{3}{4}$ West, is correct, do you?

A. Yes.

Q. Then you withdraw the testimony you gave earlier today that at that time she was steering some other course, do you?

A. That is what I was steering.

Q. That is what you were steering?

A. I don't know what they put down in the log book. They might have put down in the log book. They might have put down South $\frac{1}{4}$ West, for all I know.

Q. On what heading or course was the "Denali" immediately before she struck the reef?

A. Well, $\frac{3}{4}$ of a point, that will be North by East half East.

Q. Is that the course you were steering on the "Denali" just before she struck the reef?

A. No.

(Testimony of Emil Tell.)

Q. What were you steering on the "Denali" just before she struck the reef?

A. North $\frac{3}{4}$ East.

Q. Who gave you that course?

A. The pilot told me to port my helm. [2506]

Q. And then he told you "Steady", is that right?

A. Yes.

Q. And when he told you "Steady" you were on what course?

A. North $\frac{3}{4}$ East.

Q. And that is the course you were steering at the time the vessel struck the reef, is that right?

A. Yes, sir.

Q. You know that if the ship was heading North $\frac{3}{4}$ East she wouldn't be in the middle of the channel, wouldn't even seem to be so?

A. It appeared to be in the middle of the channel.

Q. There was something wrong with the compass if the direction shown by the compass was North $\frac{3}{4}$ East and you could look and see that the ship would bump into Zayas Island if she kept on that heading?

Mr. Long: That is objected to as argumentative.

The Court: Let the witness answer the question, if he can, but similar questions should not be repeated.

The Witness: What was the question. (Question read.) Well, maybe she would run into Zayas Island.

(Testimony of Emil Tell.)

Q. You never told the Steamboat Inspectors anything about being able to see Zayas or Dundas Island, or any of those other thnigs, at 2:00 a. m. when you went on watch, on May 19th, did you?

A. No.

Q. Why didn't you?

A. I wasn't asked.

Q. They asked you how far you could see, and you said "That is pretty hard, Captain, to tell"; is that right? That was your answer? [2507]

A. Yes, sir.

Q. How far away was Zayas Island when you came on watch at 2:00 a. m. on May 19th?

A. I don't know.

Q. How far away was Dundas Island at that time?

A. I couldn't say.

Q. You could see Triple Island Light at that time, couldn't you?

A. I saw Triple Island Light when I took the second abeam bearing—or read the log, rather.

Q. At what time was that?

A. I have forgotten the time.

Q. You cannot tell us the time you took the second abeam bearing on Triple Island Light?

A. No.

Q. What was the last time that you saw Triple Island Light on that night?

A. At the last bearing, whatever time that was.

Q. And you do not know when that was?

A. No.

(Testimony of Emil Tell.)

Q. When was the last time you read the patent log, on the morning of May 19th, 1935?

A. A minute or so before 2:00 o'clock.

Q. Could you see Triple Island Light at that time?

A. I never noticed.

Q. You mean you didn't see the light; is that what you mean to say?

A. I wasn't looking for it.

Q. Did you see it or not?

The Court: That has been answered. Ask him another [2508] question.

Mr. Ryan: All right, Your Honor.

Q. (By Mr. Ryan) When you went back to read the patent log, just before 2:00 a. m., on May 19th, what did you see?

A. I never paid any attention to anything.

Q. To whom did you first convey information as to the courses of North and North $\frac{3}{4}$ East that you have mentioned today, for the first time?

A. I don't remember that.

Q. Well, try to remember it. To whom did you first tell that, that the actual courses you were steering were North and North $\frac{3}{4}$ East, when you were on watch on that vessel, just preceding her stranding?

A. I don't remember who I told it to, or if I did.

Q. Well, you must have told somebody. Can't you recall whom you told?

A. No.

(Testimony of Emil Tell.)

Q. When did you first tell anybody about these alleged courses of North and North $\frac{3}{4}$ East that you say you were steering immediately preceding the stranding of the "Denali"?

A. I was talking about it in the lifeboat to somebody, but I don't know who it was.

Q. Capt. Healy?

A. No.

Q. The second mate?

A. No.

Q. The third mate?

A. No.

Q. The chief officer? [2509]

A. No.

Q. Who?

A. I don't remember.

Q. That was in the lifeboat, leaving the "Denali", is that right?

A. Yes.

Q. When did you tell any of the officers of the Alaska Steamship Company about that fact, that you were actually steering courses of North and North $\frac{3}{4}$ East, immediately preceding the stranding of the "Denali"?

The Court: If you recall you may state it, and if you do not, then say so.

The Witness: No; I don't remember who I told about that.

The Court: The question is when, if you recall, was the first time.

(Testimony of Emil Tell.)

The Witness: I don't remember that.

Q. (By Mr. Ryan) When you came down to Seattle, immediately after the stranding, you came on the steamer "Alaska", didn't you?

A. Yes; I did.

Q. And then you went with Pilot Obert and others up to Mr. Murphy's office at Pier 2, did you not, in Seattle?

A. No, sir.

Q. Where did you go at that time, when you came off the "Alaska", on arriving here on the early morning of May 23, 1935?

A. I went up to see a doctor.

Q. Then who did you go to see, on that date?

A. I didn't see anybody. [2510]

Q. Who did you first see, connected with the Alaska Steamship Company, after you arrived in Seattle, after this stranding?

A. I don't recall that.

Q. Do you know Mr. Murphy?

A. Yes, I do.

Q. Did you go to Mr. Murphy's office on May 23, 1935, in Seattle?

A. I do not recall that at all.

Q. Do you deny that you did?

A. I do not. I do not recall it.

Q. Did you go to Mr. Bogle's office on May 23, 1935?

A. No, sir.

Q. In Seattle?

(Testimony of Emil Tell.)

A. No, sir.

Q. Are you sure you did not?

A. I am.

Q. When did you first go to Mr. Bogle's office and see Mr. Child or Mr. Long or Mr. Bogle?

A. On the 31st of May, this year.

Q. That was the first time you were ever in Mr. Bogle's office; do you mean to say that?

A. That is right.

Q. When did you first see them, or somebody connected with that office?

A. In San Francisco.

Q. When was that?

A. The 25th of May, this year.

Q. You are positive about that?

A. Yes. [2511]

Q. When you came back after this stranding to whom did you report the circumstances of this loss?

A. To the Inspectors.

Q. Before the Inspectors, the day before you went to the Inspectors, to whom did you report?

A. I don't remember.

Q. Who asked you to go to the Inspectors?

A. I think it was one of the officers.

Q. What officer?

A. I don't know which one it was.

Q. One of the officers of the Alaska Steamship Company?

(Testimony of Emil Tell.)

A. One of the officers on the ship, on the "Denali"?

Q. You don't know who it was?

A. No.

Q. Did you tell that officer that you had been actually steering the courses of North and North $\frac{3}{4}$ East before the stranding?

A. I did not.

Q. Did you tell anybody?

A. No.

Q. Why didn't you?

A. It was none of my business.

Mr. Ryan: That is all, Your Honor.

Mr. Pellegrini: I have a question or two that I would like to ask the witness.

The Court: You may do so.

Q. (By Mr. Pellegrini) Mr. Tell, I believe you testified that you fix the time of 2:25 by reason of the fact that the ship's bell was rung, is that right?

[2512]

A. Yes.

Q. And that is how you know that?

A. Yes.

Q. Now, did they ring the ship's bell on board the "Denali" all the time?

A. Every half hour.

Q. Did they ring it that night?

A. Yes, they did.

Q. I will ask you whether on page 15 of the transcript of the testimony in the trial of Capt.

(Testimony of Emil Tell.)

Obert before the Steamboat Inspectors, on June 21, 1935, you were asked this question:

“Q. There was a man on lookout?

A. Yes, sir.

Q. Did this man strike the ship’s bell half hourly?

A. No. We didn’t strike any bells.”

Were you asked that question, and did you make that answer?

A. I did; yes.

Mr. Pelegriani: That is all.

Redirect Examination

By Mr. Long:

Q. To whom does that refer, Mr. Tell, in that question the reference to “this man”? Does that refer to the lookout?

A. The clock in the wheel-house strikes itself, so we can not strike the bell in the wheel-house.

Mr. Long: Very well.

Mr. Ryan: If the Court please, I have a question in [2513] my notes that I forgot to ask, and I would like to ask the question of this witness. I want to show the witness this photograph here, this photograph of the “Denali”, and ask what that iron deck cargo was that was right next to the pilot house.

Mr. Long: I object to that, Your Honor, the witness didn’t take the pictures.

Mr. Ryan: He was asked about securing the deck cargo.

The Court: Yes. The objection is overruled.

(Testimony of Emil Tell.)

Further Cross Examination

By Mr. Ryan:

Q. What was this deck cargo that was in the forward well deck of the "Denali", right up against the pilot house?

The Court: As shown by what?

Mr. Ryan: As shown by this photograph, Claimants' Exhibit A-6-9, formerly Cargo Claimants' Exhibit 4-F, in connection with the deposition of Commander Richards.

Mr. Long: I wish to object to the form of the question. Counsel can ask what the photograph shows. But his statement that it was up against the pilot house is obviously untrue.

The Court: The objection is overruled.

Mr. Long: I ask that the statement be stricken.

The Court: The application is denied.

Mr. Long: Exception, please.

The Court: Exception allowed.

The Witness: Read that question, please. (Last question read.)

The Court: Look at the photograph. [2514]

The Witness: It could not be up against the pilot house. It was up against the bulkhead in the well deck.

The Court: No; but you can see——

The Witness: (Interposing) No, sir; I cannot see it; it is too close.

The Court: You mean on account of lack——

(Testimony of Emil Tell.)

The Witness: (Interposing) My eyes.

The Court: On account of lack of sufficient vision you cannot make out the small photograph, is that it?

Mr. Ryan: He says on account of his eyes, Your Honor.

The Court: Lack of vision, I said.

Mr. Ryan: What is the matter with your eyes?

The Witness: I cannot look at a little bit of a box or something that is on the deck there; I cannot tell that in the picture.

Mr. Long: Tell them what is the matter with your eyes.

Mr. Ryan: I will show this photograph to Your Honor.

Q. (By Mr. Ryan) You cannot tell what those objects are in the forward well deck of the "Denali"?

A. No.

Q. And you do not know what they are, in fact?

The Court: The Court has noted the picture.

Q. And you do not know what was in the forward well deck of the "Denali", do you?

A. There was deck freight of all description.

Q. What material?

A. Oh, we had machines, and all kinds of stuff.

Q. Iron and steel, and that sort of thing? [2515]

A. Well, machines has got a little iron in them.

Q. What is this object that is shown between the end of that cargo boom, leading down to the pilot

(Testimony of Emil Tell.)

house, on this photograph, Claimants' Exhibit A-6-9, formerly Cargo Claimants' Exhibit 4-F in connection with the deposition of Commander Richards?

The Court: If you can tell.

Q. (By Mr. Ryan—continuing) This black object that is to the left of the letter "A"?

The Court: If you can tell from your recollection of the cargo, or from that picture.

The Witness: No, sir; I do not know.

Q. You do not know from your recollection what it is, do you?

A. No, sir.

Q. Do you know what those tanks are for that are shown in that forward well deck?

A. It is cargo.

Q. What kind of tanks are they?

A. Iron tanks, I guess.

Q. How many of them are there in that forward well deck?

A. Two.

Q. Two on this side, and how many on the other side of the forward well deck, right next to that bulkhead?

A. Two there.

Q. This is the port side.

Mr. Long: I submit the photograph speaks for itself, Your Honor.

The Court: The objection is overruled. He may ask the witness. [2516]

(Testimony of Emil Tell.)

Q. (By Mr. Ryan) That bulkhead runs right up, the upper part of it constitutes the forward part of the pilot house, doesn't it?

A. Yes.

Q. What is the height from the forward well deck up to the deck of the pilot house?

Mr. Long: I object to that as improper cross examination. If he has asked that question once he has asked it fifty times.

The Court: The Court is inclined to think that there is a good deal of merit in that objection.

Mr. Ryan: I was trying to get that fact established beyond peradventure. That is all.

Redirect Examination

By Mr. Long:

Q. Mr. Tell, when did you come to Seattle for this case?

A. The 31st of May, last.

Q. Were you advised that the case was set for trial in June of this year?

A. Yes, sir.

Q. And then were you further advised that it was continued?

A. Yes, sir.

Q. Then what was it necessary for you to do in order to get a ship out of here, after the case had been continued?

A. I had to take out a card.

(Testimony of Emil Tell.)

Q. At the Union?

A. Yes, sir; and take my turn.

Q. Did anything happen to you this summer which prevented you going to sea? [2517]

A. Yes, sir.

Q. What happened?

A. I was sick.

Q. Are you being paid anything more in this case than your actual expenses and your wages on board the ship?

A. No, sir.

Q. Do you expect to be paid anything more?

A. No, sir.

Q. Do you know this man Paul Rains?

A. Yes; I do.

Q. This statement that you are supposed to have made, is that true?

A. I don't remember talking to him, even.

Q. Is it true, that anything was the matter with these compasses?

A. No.

Q. Did you testify before the Steamboat Inspectors in the investigation?

A. Yes, sir.

Q. I will ask you whether or not you testified as follows:

“Q. How long had you been at the wheel?

A. Oh, an hour or so.

Q. In your experience as helmsman you, of course, would know if there was anything wrong with the steering compass?

(Testimony of Emil Tell.)

A. I should think so.

Q. In your opinion was it behaving normally?

A. Yes, sir.

Q. You had no fault to find with the steering gear?

A. No, sir. [2518]

Q. The vessel answered her helm in a proper manner?

A. Yes, sir."

Did you so testify?

A. Yes, sir.

Q. And is that correct?

A. That is correct.

Q. Did you further testify, at the same time:

"Q. Had you ever noticed much difference in this voyage from Seattle between the standard and steering compass?

A. No, sir."

Mr. Pellegrini: I object to counsel attempting to impeach this witness.

Mr. Long: Counsel asked about the compasses.

The Court: The objection is overruled.

Mr. Pellegrini: An exception, please.

The Court: Exception allowed.

Q. (By Mr. Long) Counsel read you this question and answer:

"Q. Did you notice the visibility then?"

(Testimony of Emil Tell.)

Mr. Ryan: What page?

Mr. Long: It is either page 18 or 20—it is page 20 on my copy.

Q. (Continuing):

“Q. Did you notice the visibility then?

A. It was a little hazy.

Q. Could you see Zayas Island?

A. Oh, yes.”

Did you so testify?

A. Yes, sir.

Q. Did you further testify, the same page:
[2519]

“Q. After the accident happened did you see Dundas Island?

A. I saw land on both sides.”

Did you so testify?

A. Yes, sir.

Q. And is that correct?

A. Yes, sir.

Q. And did you also testify, page 21, before the Steamboat Inspectors, as follows:

“Q. You are satisfied that everything pertaining to the ship’s equipment is in good order?

A. Yes, sir.”

Mr. Summers: Just a minute, please——

Q. (By Mr. Long—continuing) Did you so testify?

Mr. Summers: Just a minute, please.

(Testimony of Emil Tell.)

The Witness: Yes, sir.

The Court: Wait a minute.

Mr. Summers: I object to that as not proper re-direct examination. There was nothing asked this witness on cross examination about that.

The Court: Do you recall anything asked by oral interrogatories, with reference to the transcript?

Mr. Summers: As I recall, there was no cross examination about the equipment generally.

The Court: I do not at this moment recall.

Mr. Long: I think so, Your Honor. Counsel went into it in detail, about compasses and other equipment. This is with reference to the compasses and the ship's equipment.

The Court: There was something about the direction [2520] he was steering, and whether or not he was on the compass, or on the pilot's orders, or whatever it was.

Mr. Summers: This covers everything.

The Court: I have some doubt about it, but he may answer the question.

Mr. Long: I have already propounded the question.

The Court: And the record shows that the question has been answered.

Q. (By Mr. Long) Did you answer it?

A. Yes, sir.

The Court: Read the question and the answer.

(Question and answer read as follows:

“Q. And did you also testify, page 21, before the Steamboat Inspectors, as follows:

(Testimony of Emil Tell.)

‘Q. You are satisfied that everything pertaining to the ship’s equipment is in good order?’

‘A. Yes, sir.’”)

Q. (By Mr. Long) Did you also testify before the Steamboat Inspectors, in substance and in effect as follows:

“Q. How does the officer on watch con the courses?

A. I tab what I want and he checks me.

Q. Have you a voice pipe overhead?

A. Yes, sir.

Q. How often do you do that?

A. Every hour or couple of hours.

Q. Have you ever noticed much difference in this voyage from Seattle between standard and steering compass?

A. No, sir.”

Did you so testify? [2521]

A. Yes.

Q. And is that correct?

A. Yes, sir.

Q. Did you further testify as follows, referring to the compasses again:

“Q. If there was any wide difference you would hear some comment about it, wouldn’t you?

A. Yes, sir.”

Did you so testify?

A. Yes, sir.

(Testimony of Emil Tell.)

Q. And further:

“Q. From the time you left Seattle there was nothing unusual about the compass?

A. No.”

Did you so testify?

A. Yes, sir.

Q. Do you know who this man Rains is employed by, that counsel spoke of?

A. Who he is employed by?

Q. Yes.

A. I don't know.

Q. Does he go to sea?

A. He used to.

Q. This man Rains, did you see him this summer, Emil, this fellow Rains?

A. No.

Q. Did you ever see him this summer?

A. No.

Q. Did you know he was looking for you?

A. Yes; I did. [2522]

Q. How did you find that out?

A. Through the Union Hall.

Q. Who told you down there?

A. The despatcher.

Q. What is his name?

A. Sam Thomas.

Q. What did you do when you heard that?

A. I came up and told you about it.

(Testimony of Emil Tell.)

Q. That is right; and what did he tell Thomas as to who he was representing?

A. The United States Steamboat Inspectors.

Q. And what did I do with you, immediately?

A. We went down to the Steamboat Inspectors.

Q. I took you to Capt. Hutchings?

A. Yes, sir.

Mr. Ryan: Just a minute——

Q. (Continuing) And didn't I say to him, "Are you looking for this man?"

The Court: The objection is sustained as to what you told him.

Q. (By Mr. Long) What was said by myself to Capt. Hutchings?

Mr. Ryan: I object to that.

The Court: The objection is sustained.

Mr. Ryan: In view of the order of the Court.

The Court: The objection is sustained.

Mr. Long: I want to show at this time that this man was posing as a United States Steamboat Inspector, and I heard about it, and I took this witness down to Capt. Hutchings immediately and asked Capt. Hutchings if he was looking for this witness, and Capt. Hutchings said [2523] no, and I asked if this man Rains was working for him, and he said he never heard of the man, and he said he would take it up with Washington and investigation would be made.

The Court: The objection is sustained at this time. It may or may not be material.

(Testimony of Emil Tell.)

Mr. Ryan: I move to strike Mr. Long's statement from the record.

The Court: The motion is denied.

Mr. Ryan: An exception, please.

The Court: An exception allowed.

Mr. Long: That is all. [2524]

Q. Can you see the standard compass from your station at the wheel in the pilot house?

A. No.

Mr. Long: I object to that as improper recross.

Q. (By Mr. Ryan) Then how do you know—

The Court: (Interposing) The objection is overruled.

Q. (By Mr. Ryan) Then how do you know whether there was—what the difference was between the standard and the steering compass?

A. I would not know.

Q. You would not know?

A. No.

Mr. Ryan: That is all.

Mr. Long: That is all.

The Court: You may be excused from the stand.

(Witness excused)

The Court: At this time the Court will take a ten minute recess.

(Recess)

(Testimony of David Patrick Scanlon.)

The Court: Call your next witness.

Mr. Long: Mr. Scanlon, will you take the stand?
[2525]

DAVID PATRICK SCANLON,

called as a witness on behalf of Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. Long:

Q. What is your full name, please?

A. David Patrick Scanlon.

Q. How do you spell your last name?

A. S-c-a-n-l-o-n.

Q. What is your business, Mr. Scanlon?

A. I am a seafaring man—a seaman.

Mr. Ryan: What is the answer?

(Answer read)

Q. (By Mr. Long) How many years have you been going to sea?

A. Oh, since 1918.

Q. Have you had any sea experience in Alaska?

A. Yes; about fifteen years.

Q. How old are you?

A. Forty-one.

Q. Were you a member of the crew of the "Denali" in the spring of 1935 on her voyage—

A. (Interposing) Yes, sir.

Q. (Continuing) —on which she stranded?

A. Yes, sir.

(Testimony of David Patrick Scanlon.)

Q. When and where did you join the vessel?

A. At West Seattle.

Q. Do you remember the date?

A. The 13th.

Q. Of what month? [2526]

A. May 13th.

Q. What is that?

The Court: "May 13", he said.

Q. (By Mr. Long) 1935?

A. 1935, yes, sir.

Q. Who sent you to the ship?

A. The Sailors' Union.

Q. What certificates, if any, do you hold issued by the United States Department of Commerce?

A. Able Seaman and Lifeboat certificate.

Mr. Ryan: What is that?

The Witness: Able Seaman and Lifeboat Certificate.

The Court: Mr. Scanlon, it is necessary that you hold your voice up and speak your words distinctly, because it is very difficult to hear in this room.

The Witness: Yes, sir.

Q. (By Mr. Long) Did you hold those certificates while you were a member of the crew of the "Denali"?

A. Yes, sir.

Q. In what capacity did you sign on that ship?

A. As Able Seaman.

Q. What watch did you stand at sea?

A. From four to eight.

(Testimony of David Patrick Scanlon.)

Q. That would be four to eight in the morning and four to eight at night?

A. Yes, sir.

Q. And what time did you come on watch on the morning of May 16th—the morning that the ship sailed from Pier 2?

A. At four o'clock. [2527]

Q. Did you stand a wheel watch that morning?

A. Yes, sir.

Q. Between what hours?

A. From six to eight.

Q. Where was the vessel between 6:00 and 8:00 A. M. on the morning of May 16th?

A. Between Pier 2 and West Point.

Q. Where was the ship when you came on watch?

A. It had just left Pier 2.

Q. I see. Where did the vessel go while you were at the wheel, or while you acted as helmsman?

A. Down the bay—down the Sound to West Point.

Q. And what happened at West Point? What did the vessel do?

A. It stopped.

Q. Just tell us in your own words what occurred there at West Point.

A. Well, a powder boat came alongside and started loading dynamite.

Q. What kind of a powder boat was it—what kind of a boat was it?

(Testimony of David Patrick Scanlon.)

A. A small, little wooden vessel, I should judge about fifty feet long.

Q. On which side was she, do you remember?

A. On the port side, up next to the rigging at No. 2.

Mr. Ryan: What was that answer?

(Answer read)

The Court: Mr. Scanlon—

The Witness: (Interposing) Yes, sir.

The Court: If you know the answers just speak up and give them so that all of us will hear them.

[2528]

The Witness: Yes, sir.

The Court: You have a right to be where you are now, just as much right as any person present has a right to be where he is, and you can make yourself at home there, but just keep your mind on the questions.

The Witness: Yes, sir.

The Court: And speak up so that we can all hear you.

The Witness: Yes, sir.

Q. (By Mr. Long) About what time, if you remember, Mr. Scanlon, did the vessel stop off West Point?

A. Oh, about 6:30—around about there—6:30 or 6:35.

Q. Now, what happened between that time and 8:00 o'clock while you were at the wheel?

(Testimony of David Patrick Scanlon.)

A. Well, we pulled up there, and stopped, and the boat came alongside there and stayed there, I should judge twenty or twenty-five minutes.

Q. All right. And then what happened?

A. The captain decided to swing ship.

Q. Go ahead.

A. And the second mate, he—the second mate came out of the chart room with the azimuth mirror and went up on top.

Q. Yes.

A. And the third officer stood by. He was told to stand by the telegraph.

Q. Who was with the second mate?

A. The captain.

Q. What did they do, and where did they go?

A. They went up on top—up to the standard compass. [2529]

Q. Did they take any instruments that you could see?

A. Yes, sir. They took an azimuth mirror with them.

Q. They took an azimuth mirror with them?

A. Yes, sir.

Q. About what time was that, as near as you can recollect?

A. Oh, about five minutes to seven, or seven o'clock.

Q. In the morning?

A. Yes, sir.

(Testimony of David Patrick Scanlon.)

Q. Now, just tell us what took place so far as you could observe after that.

A. Well, he told me to steady her up on the course that I was headed at that time.

Q. What course was that?

A. West Southwest, along about there, I guess.

Q. All right. What happened?

Mr. Ryan: I move to strike out the witness' answer. He says, "I guess".

Q. (By Mr. Long) Well, approximately what was it—the heading at that time?

The Court: The motion is granted, and counsel inquiring may establish the fact more definitely if he desires by further examination.

Mr. Long: That is all right.

Q. (By Mr. Long) Do you know the approximate heading at that time of the ship?

A. West Southwest.

Q. Just tell us in your own words, not too fast, what happened from then on.

A. Well, I steadied her on that course of West Southwest.

Q. How long did you stay steady on that course, approximately? [2530]

A. About three or four minutes.

Q. Then what happened?

A. Then the captain said, "Port one point".

The Court: Who said that?

The Witness: The captain. He said, "Port one point", and "Steady", and I steadied her on that,

(Testimony of David Patrick Scanlon.)

and I was there on that two or three or four minutes, along in there, and then I continued right around the compass.

The Court: Now, let us have that re-read.

Mr. Long: Just a minute. I have not quite finished.

Q. (By Mr. Long) Then the next one?

A. Then we continued right around the compass.

Q. Right around the compass which way?

A. Around towards the right.

Q. Towards the right?

A. Yes, sir.

The Court: Is that answer complete?

Mr. Long: Around to the right, as I understood it.

The Court: Is that answer complete?

The Witness: Yes.

The Court: Then I want to have it read.

Mr. Long: Just read that back, if you will, Mr. Reporter.

(Questions and answers read)

Q. (By Mr. Long) Now, approximately how far around to the right was the ship swung?

A. Oh, about east—I should say—a good half or a little better of the compass.

Q. You will have to speak up a little louder. I cannot [2531] quite hear you, Mr. Scanlon.

A. We swung to the right around to the east, or about east.

(Testimony of David Patrick Scanlon.)

Q. Did you stop at any time in your swinging?

Mr. Ryan: Would you read that answer?

(Answer read)

Q. (By Mr. Long) Now, during the time that you swung from West Southwest to about East, did you stop at any place all the way around?

A. We stopped on each and every point.

Q. And how long did you stay on each point?

A. From three to four minutes.

Q. Do you know what the second officer and the captain were doing?

A. Well, I surmise what they were doing.

Q. What was that?

Mr. Ryan: Wait a minute.

A. Swinging the ship to check the compasses.

Mr. Ryan: I object to any surmise of the witness.

Mr. Long: He is an experienced seaman.

Q. (By Mr. Long) Do you know what they were doing on the top side?

A. Yes.

Q. What were they doing?

A. They were taking azimuths.

Mr. Ryan: Wait a minute. The witness could not see what they were doing.

The Court: Objection overruled. In view of what took place—what you saw and in view of your experience on other occasions, do you know what was being done at that time? [2532]

The Witness: Yes, sir.

(Testimony of David Patrick Scanlon.)

Mr. Ryan: May I ask a question, Your Honor? The witness has already used the words, "I surmised what they were doing". Now, he was in a position where it is already shown by the record that he could not see them at all. How can a man be asked to tell what some people were doing when they were doing something not within the range of his vision?

The Court: It might be that if you or I used the word "surmise" on the witness stand it might be a case that we would mean to indicate what the word means, but in view of this witness' manner of testifying, and the Court having observed that, and his sea language, the objection is overruled.

Q. (By Mr. Long) What were they doing, Mr. Scanlon?

A. They were taking azimuths.

Mr. Ryan: May I ask a question? Did you see them doing that?

The Court: No, you need not answer, witness. You may ask your questions on cross examination.

Mr. Ryan: Very well, Your Honor.

Q. (By Mr. Long) About how long a time were the second officer and the captain engaged, or at work on the top bridge where the standard compass is while you were swinging the ship as you have testified here?

A. Oh, about an hour.

Q. When were you relieved at the wheel, sir?

A. At eight o'clock.

(Testimony of David Patrick Scanlon.)

Q. Had they completed their work up there at that time?

A. They just came down as I got relieved, yes, sir. [2533]

Q. They just came down as you got relieved?

A. Yes, sir.

Q. Now, were you on the wheel watch of the Steamer "Denali" from any time thereafter until the ship stranded?

A. Yes. The following morning.

Q. I beg your pardon?

A. The following morning.

Q. I see. By the way, what duties did you have to perform in connection with the ship's gear in the morning, Mr. Scanlon?

A. Well, from 4:00 to 8:00 o'clock it is a kind of order, in fact, on all Alaska steamships or freighters to take care of the steering gear in the wheel house in the morning and do the sanitary work.

Q. I see.

A. To take care of the steering wheel.

Q. And what care do you give the steering wheel?

A. We grease it. We grease all parts; the quadrant and the chains.

Q. How frequently was that done on this voyage?

A. Twice every day; night and morning.

Q. Did you personally do that?

A. Yes, sir.

(Testimony of David Patrick Scanlon.)

Q. Now, on this voyage, Mr. Scanlon, and while you were at the wheel, just tell us how the vessel steered as you observed it?

A. It steered good.

Q. Did you observe any defects in the compass?

A. No.

Q. Did you observe any trouble with the compass at any time? [2534]

A. No.

Q. How about the card—how did the compass card appear as you looked at it?

A. It appeared all right to me.

Q. Tell us, Mr. Scanlon, while you were at the wheel watch on this voyage did you observe the officers taking any azimuths on the voyage?

A. I did. The following morning; yes, sir.

Q. And did you have some duty to perform in connection with their taking of azimuths or bearings?

A. Steady the ship on her course.

Q. You did what?

A. I had to keep the ship steady on her course while they were taking them.

The Court: That is right. Keep your voice raised while you are testifying.

Q. Where were you when the ship struck?

A. I was in bed.

The Court: I did not hear that answer.

(Answer read)

The Court: I wish you would keep your voice up.

(Testimony of David Patrick Scanlon.)

You would not convey a message on board a ship in that tone of voice. I know that you would not. Keep your voice up, and clear and distinct so that we will all hear what you say. It is necessary that we all hear it.

The Witness: All right.

Q. (By Mr. Long) Just one other question. While you were on watch, Mr. Scanlon, did you observe the watch officers comparing and checking the steering and standard compasses? [2535]

A. Yes, sir.

Q. Did you have some duty to do in connection with that work?

A. Yes, sir, I did.

Q. What did you do?

A. I steadied the ship on the course while they were checking the compasses.

The Court: Every word is just as important as any other word in the sentence, because we have got to hear every word. Keep your voice raised now.

The Witness: Yes, sir.

The Court: I know that you can do it.

Q. (By Mr. Long) After the stranding, Mr. Scanlon, did you go ashore?

A. Yes, sir.

Q. How did you get ashore?

A. By lifeboat.

Q. Did you row the boat?

A. Yes, sir.

(Testimony of David Patrick Scanlon.)

Q. Do you know where you went ashore—on what land it was?

A. Yes, sir.

Q. What land was it?

A. Zayas Island.

Q. What did you observe with reference to any current while you were rowing the boat there? Just tell us in your own words, and speak up now so that we can hear it.

A. Well, when we dropped the boat into the water—

Q. (Interposing) On which side of the ship?

A. The starboard side.

Q. All right. [2536]

A. She drifted right aft where we held her away from the side of the ship. She was crowding the ship.

Q. All right; go ahead.

A. And we got astern of the ship, and there was a little house over on the beach, and we tried to make for this little house, and we drifted about half a mile below the house—possibly three-quarters of a mile below—as the tide carried us down.

Q. Now, which direction, approximately, did the tide carry you?

A. It carried us to 'the south end of Zayas Island.

Q. Which direction would that be, if you know, with relation to east, west or south?

A. It would be west.

Mr. Long: That is all.

(Testimony of David Patrick Scanlon.)

Cross Examination

By Mr. Ryan:

Q. Tell us what you know about compass deviations.

A. I don't know anything about them.

Mr. Long: That is objected to as improper cross examination. I haven't asked the witness any questions about compass deviations.

The Court: Objection overruled. He said that he didn't know anything about them. That was his answer.

Mr. Ryan: All right, Your Honor.

Q. (By Mr. Ryan) Then you don't consider yourself capable of determining when a compass is in a satisfactory condition, do you? [2537]

A. Well, to a certain extent I do, yes.

Q. Well, when you are standing down there in the pilot house, steering, you have no idea whatever what is on the standard compass, have you?

A. Only from what I have been told, or what is brought down by the officers.

Q. The officers report to you?

(Witness does not answer)

Q. They don't report to you, do they?

A. Oh, no; no.

Q. Did you see a second powder boat on the morning of May 16th when the "Denali" sailed from Seattle?

A. Yes, sir.

Q. Off West Point?

(Testimony of David Patrick Scanlon.)

A. Yes, sir.

Q. And what time did she come along the "Denali" and was made secure?

A. I can't tell you just what time she came alongside.

The Court: What is that?

Mr. Long: Speak up, Mr. Scanlon. We cannot hear you.

A. I can't tell you just what time she came alongside.

Q. (By Mr. Ryan) How soon was it after the "Denali" arrived off West Point that the second powder boat got her lines over and was secured alongside the "Denali"?

A. That I cannot answer, as to the time.

Q. Where were you at the time?

A. At the wheel.

Q. At the wheel?

A. Yes, sir. [2538]

Q. When the second powder boat was coming alongside did the "Denali" make any manouvers so that she could come alongside safely or not?

A. Yes, I believe that she did.

Q. Well, what manouvers did she make?

A. Well, she was stopping, and went slow around and stopped.

Q. And what time was that?

A. I don't know just what time it was.

Q. On which side of the ship did the second powder boat secure alongside of the "Denali"?

(Testimony of David Patrick Scanlon.)

A. On the starboard side.

Q. On the starboard side?

A. Or on the port side.

Q. Now, which side was it?

A. On the port side.

Q. On the port side?

A. Yes, sir.

Q. That was the same side that the first powder boat was secured alongside, was it?

A. Yes, sir.

Q. Was it?

A. Yes, sir.

Q. They both were secured on the same side?

A. Yes, sir.

Q. West Point is on the starboard side of the "Denali" as she goes up on Puget Sound, on reaching West Point, isn't it?

A. Yes, sir.

Q. Yet both powder boats came over from the port side, is [2539] that right?

A. I don't know, from the position that the ship was in, just where they came from.

Q. How long was it after you went on watch that the second powder boat came alongside?

A. I don't recall that.

Q. Well, was it half way through, or immediately after you came on watch, or when was it?

A. I cannot recall the time.

Q. Well, both powder boats came together, didn't they? they were both lying off West Point waiting for you, weren't they?

(Testimony of David Patrick Scanlon.)

A. Well, they were supposed to come, yes.

Q. Well, you saw them?

A. At a distance, yes.

Q. Both of them were coming out to the ship?

A. Yes, sir.

Q. They were racing there to see who would get out there first, weren't they?

A. Well, I don't know that they were.

Q. Well, it looked that way, didn't it?

A. They were coming, but I don't know as they were racing.

Q. One of them got there first and secured up alongside of No. 2 hatch, isn't that right?

A. Well, from where I was standing I could not see the boats alongside of the ship when they came.

Q. You could not?

A. No, because they got in close.

Q. Well, they would have to get in mighty close before they would go out of your line of vision, wouldn't they, [2540] standing there at the wheel?

A. No, not necessarily.

Q. You mean to say that a man standing at the wheel cannot see a boat that is coming alongside right up until she is practically alongside of the ship?

A. No, sir.

Q. Now, what course was the "Denali" steering from Pier 2 up to West Point?

A. That I don't remember.

Q. What?

(Testimony of David Patrick Scanlon.)

A. I don't remember.

Q. What course was the "Denali" steering at 8:00 A. M. on May 16, 1935?

A. We were just swinging back to an earlier course when I was relieved at the wheel.

Q. Do you understand the question?

A. Yes, sir.

Q. Then answer it.

A. We had no set course at that moment.

Q. At 8:00 A. M. on May 16, 1935, the "Denali" was not on a set course?

A. No, sir.

Q. That is when you went off watch, isn't it?

A. When I went off watch she wasn't on a set course.

Q. And that was at 8:00 o'clock?

A. I don't know whether it was five minutes to eight or eight o'clock, or just what it was, but it was around eight o'clock.

Q. On what course was the "Denali" at 6:22 A. M., May 16, 1935? [2541]

A. I cannot tell you.

Q. On what course was the "Denali" at 5:57 A. M. on May 16, 1935?

A. I don't know that.

Q. What?

A. I don't know that.

Q. You were at the wheel, weren't you?

A. At what time?

Q. At 5:57 A. M.

(Testimony of David Patrick Scanlon.)

A. No, sir.

Q. On May 16, 1935.

A. No, sir. I came onto the wheel at 6:00 o'clock.

Q. Well, at 6:22 A. M. on May 16, 1935, what course was the "Denali" steering?

A. I don't remember.

Q. Now, when they were swinging this ship, all you got was the order to steady, isn't that right?

A. Port and steady.

Q. Yes.

Mr. Long: I didn't hear the answer.

A. Port and steady.

Q. (By Mr. Ryan) Did you make any record at the time of the headings that the ship was on?

A. No, sir. I made no record.

The Court: Is that your answer, "No, sir, I didn't know that"?

The Witness: I said, "I didn't make no record".

Q. (By Mr. Ryan) How many times did the "Denali" stop her engines between 7:00 and 8:00 A. M. on May 16, 1935?

A. I don't know. [2542]

Q. What?

A. I don't remember.

Q. Well, you were on watch at the wheel, weren't you?

A. Yes, sir, I was on watch at the wheel.

Q. But you cannot give us any idea how many times she stopped her engines?

A. No, sir, I cannot.

(Testimony of David Patrick Scanlon.)

Q. Well, now, when you swung around, was there or was there not a stop order given to the engines and executed on the engine room telegraph?

A. Yes, I believe there was.

Q. How many times, roughly, if you remember?

A. I cannot remember. I made no estimate.

Q. At what time do you say that the "Denali" started swinging through those headings?

A. As close as I can remember five minutes to seven or at seven o'clock, or maybe at ten minutes to seven. In about that neighborhood.

Q. At that time were both powder boats secure alongside or not?

A. That I cannot say.

Q. What was the first order that you heard to the engines?

A. I don't remember that.

Q. After this supposed swinging?

A. After this what?

Q. After this alleged swinging began what is the first order that you heard to the engines?

A. I don't remember.

Q. Well, how were the engines proceeding at the time that this swinging began, if you know? [2543]

A. Slow ahead.

Q. How long did they continue slow ahead after the swinging began?

A. I didn't pay any attention to the telegraph.

Q. Can't you give us any idea?

A. No.

(Testimony of David Patrick Scanlon.)

Q. Approximately how many times the engines were stopped, can't you give us any idea?

A. No, sir.

Q. Or changes of speed that were made?

A. No, sir, I cannot. I paid no attention to the telegraph.

Q. Now, when this order was given to you to port your helm, is that the order that you got?

A. Yes, sir.

Q. And then you would continue on that until what time? Would they rap, or something, or what would they do? How did you know when you got to a point where you were to steady?

A. The orders were port a point and steady.

Q. They were not checking by the standard compass at all, is that right?

A. Yes.

Q. You were the one that was setting the course, were you?

A. No.

Q. Then what do you mean?

A. They were checking me. I put it plain on the steering compass according to what they wanted up there. They were telling me what to do.

Q. Then how would you know when you got to the point where you were to steady? Nothing would happen there, isn't [2544] that right?

A. Yes. They would sing out, "Steady".

Q. Would they order you to steady?

A. Yes, sir.

(Testimony of David Patriek Scanlon.)

Q. Then the order came to you, "Port your helm" like that?

A. "Port a point", and when I got in close they would say, "Steady".

Q. They would not leave it to you when you got to the point to steady her?

A. No. They would sing out, steady.

Q. What they would do would be that they would give you the order to port your helm one point?

A. Yes, sir.

Q. And when you did that you got an order to steady her, and then you would steady her, is that right?

A. Yes. What other order would they have to give?

Q. Well, they gave you the order to port the helm, didn't they?

A. Yes, sir.

Q. And then you would port the helm, is that right?

A. Yes, sir.

Q. And then after you swung around a certain time they would say, "Steady"?

A. Yes, sir. They would say, "Port the helm one point; steady".

Q. Is that all that happened?

A. Yes, sir.

Q. And you made no record of where you steadied her?

(Testimony of David Patrick Scanlon.)

A. I made no record, no.

Q. Now, do you mean to tell us that you know now exactly [2545] where you steadied on any of those points?

A. Well, I steadied on each and every one of them.

Q. Do you know on which points you steadied?

A. Yes, sir.

Q. All right. Did you steady on East by North?

A. Yes, sir.

Q. Well, you are the only witness in the case who has testified that the ship was ever on that heading. Do you still think that you were on that heading?

A. (Witness does not answer)

Q. Do you still think that you were on that heading?

A. I went around as far as east to my knowledge.

Q. I see.

A. I went around as far as east to my knowledge.

Q. Have you anything to support your statement to that effect?

Mr. Long: That is not cross examination. That is simply arguing with the witness.

The Court: Objection overruled.

A. No. I am merely giving you the best of my remembrance as to what we did. I have got nothing to show for it. I made no records of any of that stuff.

(Testimony of David Patrick Scanlon.)

The Court: Ask him another question.

Q. Do you know Paul Rains?

A. Yes, I know Paul Rains.

Q. Do you know Ernest Falk?

A. Not offhand, I don't believe I do.

Q. Will you stand up, Mr. Falk?

(Mr. Falk stands up in the court room)

Q. Do you know Mr. Ernest Falk (indicating Mr. Falk)? [2546]

A. No, I don't know that I do.

Q. Did you see Ernest Falk and Paul Rains on or about September 5, 1935?

Mr. Long: Let the record show that Mr. Falk is employed by Mr. Summers and Mr. Ryan.

The Witness: September 5th?

Q. (By Mr. Ryan) Yes.

The Court: Let the witness testify. The record will have to stand as made by the witness.

Mr. Ryan: I move to strike Mr. Long's statement.

The Court: Yes, that motion is granted.

Mr. Long: You do not deny that, do you, Mr. Ryan?

The Court: It is granted. Proceed. That statement by Mr. Long is stricken.

Q. (By Mr. Ryan) Did you or did you not state to Ernest Falk and to Paul Rains, on or about September 5, 1935, in Seattle, at the Boulders Tavern——

Mr. Long: (Interposing) At where?

(Testimony of David Patrick Scanlon.)

Mr. Ryan: At the Boulders Tavern.

Mr. Long: I didn't hear the name.

Q. (By Mr. Ryan, continuing)—with respect to the cause—

The Court: (Interposing) Boulders, B-o-u-l-d-e-r-s Tavern, Mr. Long.

Q. (By Mr. Ryan) Did or did you not state to Ernest Falk and to Paul Rains on or about September 5, 1935, in Seattle, Washington, at the Boulders Tavern, with respect to the cause of the "Denali" stranding, in the course of that conversation in substance, "It is my opinion that the ship was put off her course by the large amount of metal cargo on the fore deck, causing deviation of the [2547] compasses". Did you or did you not so state?

A. I did not so state.

Q. What did you state at that time to those persons?

A. I don't believe that I ever was in the Boulders Tavern on that date.

Q. Well, what have you stated at any time, and at any place, to those two persons with respect to your opinion as to the cause of the "Denali" stranding?

Mr. Long: That is objected to.

A. I never said nothing, to my knowledge. I never talked to them gentlemen over there at all.

Q. All right. Have you ever stated to Paul

(Testimony of David Patrick Scanlon.)

Rains—given him your opinion with respect to the cause of the “Denali” stranding?

A. No, sir, not to my knowledge.

Q. Well, that is not quite an answer. Read the question.

Mr. Long: That is improper cross examination. He has asked him an impeaching question and the witness has answered it and he said, “No”.

The Court: You ought to ask him what specific statement he made.

Mr. Long: Certainly. Now, is this statement signed, Mr. Ryan? If it is, may I see it?

Mr. Ryan: Now, I object—

The Court: (Interposing) Counsel is entitled to ask him whether he said so and so in the presence of a man, whether it is in writing or oral.

Mr. Long: Well, I am asking whether it is in writing or not. I would like to see it if it is. I think that counsel should advise me. [2548]

The Court: Wait until he propounds the question.

Q. (By Mr. Ryan) Have you ever stated to Paul Rains and Ernest Falk, or to either of them, in substance, as follows: “It is my opinion that the “Denali” was put off her course by the large amount of metal cargo on the fore deck, causing deviation of the compasses”.

Mr. Long: I object to that.

A. No, sir.

Q. You deny that?

A. I deny it absolutely.

Mr. Long: I object to that.

The Court: He has answered the question.

Mr. Ryan: That is all.

Redirect Examination

By Mr. Long:

Q. Where is this Boulders Tavern? What is it, do you know? Have you ever seen the place?

A. Yes, I have seen it.

Q. What is it?

A. It is a beer parlor and dance hall, if that is what you want to call it.

Q. Did you ever talk to Paul Rains there about this case?

A. No, not to my knowledge.

Q. Or at any other place?

A. No, sir.

Q. Now, there is just a little confusion with respect to the orders that you received from the master while swinging the ship. Will you tell us in your own language—first, [2549] let me ask you, what does the order, “Port your helm” mean? Which way does that swing your ship’s head?

A. Starboard.

Q. That is right. Now, just tell us in your own words, slowly, now, what actual orders you received, as near as you can remember, in your own words.

Mr. Ryan: I object to that as not proper redirect examination. The matter was fully covered on direct.

The Court: The objection to the question is sustained on the ground that it is repetitious.

Mr. Long: Well, if Your Honor is clear as to exactly what happened, all right.

(Testimony of Erland L. Erlands.)

The Court: Yes, I am clear on what this witness said happened. I heard this witness which, according to this man, was very fully given on direct examination.

Mr. Long: Very well, that is all.

The Court: You may be excused from the stand.

(Witness excused)

The Court: Call your next witness. [2550]

ERLAND L. ERLANDS

called as a witness on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. Bogle:

Q. Will you state your name?

A. Erland L. Erlands.

Q. What is your business or profession?

A. Stevedore foreman.

Q. Have you had any seafaring experience?

A. Oh, yes, quite a bit.

Q. How many years?

A. Oh, I started when I was 14.

Q. What licenses do you hold?

A. Master, unlimited.

Q. Did you have any experience in Alaska waters?

(Testimony of Erland L. Erlands.)

A. Quite a bit.

Q. How many years, Captain?

A. Well, I would say from 1911 to the fall of 1917.

Q. In what capacity?

A. Sailor, quartermaster, and as a mate.

Q. How long have you held a master's license?

A. Since 1921.

Q. How long has it been, Captain, since you have been going to sea actively?

A. I have never been a captain.

Q. What?

A. I have never sailed as a captain.

Q. I say, how long has it been since you have been going to sea? [2551]

A. 1921.

Q. What have you been doing since that time?

A. Stevedore foreman for the Alaska Steamship Company.

Q. As stevedore foreman just what are your duties?

A. To load and unload the ships.

Q. At what port?

A. Seattle.

Q. Were you acting in that capacity in May, 1935?

A. Yes, sir.

Q. Did you have anything to do with the loading of the cargo on the steamship "Denali"?

A. Yes, sir.

(Testimony of Erland L. Erlands.)

Q. Just what did you have to do with that?

A. Well, it was my duty to put the cargo in the ship, to load it, so that it would come in rotation when it gets up to Alaska.

Q. You mean rotation as to ports?

A. Yes, sir; according to the ports.

Q. And did you do that?

A. Yes, sir.

Q. Do you draw up a cargo plan showing the loading of the cargo?

A. Yes, sir.

Mr. Bogle: I will ask to have this cargo plan identified.

(Cargo plan marked for identification Petitioner's Exhibit No. 61.)

Q. I will show you a paper here that is marked Petitioner's Exhibit No. 61 for Identification. Can you tell us what that is? [2552]

A. Yes; that is a copy of the original plan I drew of the ship.

Q. I notice that down in the right hand corner it says "S. S. Oduna".

A. Well, there are five freighters of the same type and same build, and they make one plan for all of them.

Q. Is this one of the original plans?

A. This is one of the original plans, yes.

Q. Does this show approximately the place, the location of the cargo as stowed in the ship?

A. Yes, sir.

(Testimony of Erland L. Erlands.)

Q. Did you have any deck cargo on that voyage?

A. Yes, sir.

Q. Where does the location of the deck cargo show on this plan?

A. Right in here (indicating), on the well deck.

Q. Can you tell us from this plan what cargo you had loaded on the well deck?

A. On the port side we had one——

Mr. Ryan: (Interposing) Just a minute; I think the plan ought to be offered in evidence.

Mr. Bogle: I am going to offer it, Mr. Ryan, but I thought I had to identify it a little further, first.

Mr. Ryan: I think it should be identified by the witness, first.

The Court: Counsel may ask the question.

The Witness: On the port side we had a 12 ton boiler for Blue Fox Bay, and on the same side we had three or four—I don't remember correctly how many it was, but it was three or four road graders for the Government, [2553] at Anchorage.

Q. Road graders?

A. Yes; road graders. And then we had on the port side, in the rigging, we had one 8 ton boiler for Blue Fox Bay. And on the port side forward—well, I should say we had around ten to fifteen thousand feet of lumber for Skowl Arm.

The Court: Let the answer be more direct in response to the question. I do not understand that the question calls for the witness to delineate and

(Testimony of Erland L. Erlands.)

specify the various items of cargo loaded on the ship.

Mr. Bogle: I do not intend that by the question, Your Honor, but I will offer this cargo plan in evidence.

The Court: There being no objection——

Mr. Pellegrini: If the Court please, I object to this offer unless it is identified as the actual cargo plan of the vessel, the cargo loaded on the "Denali" at the time she sailed.

The Court: You might proceed, if you wish to ask anything further.

Mr. Ryan: If it is going to be offered may I examine the witness?

Mr. Pellegrini: I think the witness stated that the plan is used for all of the ships of that same class. That is my recollection of his testimony.

Mr. Bogle: The blueprint part of it is the same for all of them. I thought I had asked him the question.

Mr. Ryan: Just a minute; if you offer this in evidence I would like to examine on it.

Mr. Bogle: I have offered it, and there has been an [2554] objection.

The Court: Counsel may proceed with further questions touching the proper authentication of this exhibit No. 61 for identification.

Q. (By Mr. Bogle) Is this Petitioner's Exhibit No. 61 for Identification one of the original cargo plans which you prepared, showing the ap-

(Testimony of Erland L. Erlands.)

proximate place of stowage of cargo on the steamship "Denali" on Voyage No. 38, upon which she was lost?

A. Yes, sir, that is the actual blueprint. That is a copy of the original. I used two in making out the cargo plan; one I give to the chief officer, and the other one I turn in to the company.

Q. The one we have here is the one that you turned in to the company?

A. Yes, sir.

Q. Then this shows approximately the location of all cargo loaded on the "Denali", Voyage No. 38, on which she was lost?

A. Yes, sir.

Mr. Bogle: Now I offer it in evidence.

The Court: The offer is now renewed. Do you wish to inspect it, Mr. Ryan?

Mr. Ryan: Yes; I do. May I ask one or two preliminary questions of this witness about this plan?

The Court: If the questions relate to the identity of it, or the identification of it, or the authenticity of it, you may do so.

Q. (By Mr. Ryan) Does this plan show the deck cargo that was loaded in the forward well deck of the "Denali"? [2555]

A. Yes, sir.

Q. Where?

Mr. Bogle: If Your Honor please, that is part of my direct examination.

(Testimony of Erland L. Erlands.)

The Witness: Right here (indicating); this is all the stuff that was put in there. That is No. 1 hatch, No. 2 and No. 3.

Q. (By Mr. Ryan) Is this in your handwriting?

A. That is my handwriting.

Q. These changes are in your handwriting, too?

A. No. That is something I don't know about. I use carbon paper.

Mr. Ryan: If Your Honor please, we directed an interrogatory to the Petitioner in connection with this cargo, and the Petitioner instead of producing any such plan as this gave a specific answer to the interrogatory in detail. Now, if this document that is now produced for the first time is intended to vary or depart from the answers to the interrogatories already made by the Petitioner I wish to object to it on the ground that the Petitioner is estopped from making any change at this time. If it does nothing but give the same information that was given in the answers to interrogatories, then it is entirely immaterial, and so I object to it.

The Court: The objection is overruled.

Mr. Bogle: The answers to the interrogatories are not proof, of course.

Mr. Summers: An exception, if the Court please.

The Court: Exception allowed. Petitioner's Exhibit No. 61 is now admitted. [2556]

(Cargo plan of "Denali" received in evidence Petitioner's Exhibit No. 61.)

(Testimony of Erland L. Erlands.)

Q. (By Mr. Bogle) Now, Captain, where on this Petitioner's Exhibit No. 61 does it show the stowage of your well deck cargo, on the second blueprint?

A. On the second blueprint from the top.

Q. Take this pencil now, and on the port side what cargo did you have, on the well deck?

A. On the port side?

Q. On the port side.

Mr. Ryan: Let it be understood that I have a continuing objection to this line of examination.

The Court: Yes.

Mr. Ryan: On the ground that the Petitioner has already answered the interrogatories, and if this is a departure from the interrogatories I protest against the Petitioner making a departure at this time, and if it is not a departure, then it is entirely immaterial.

Mr. Bogle: I submit that the answers to our interrogatories are not admitted by them, and we have got to prove any material fact that is answered by an interrogatory. That may be binding upon us, but we cannot rely upon it as proof.

The Witness: I have checked it over——

The Court: Indicate it to counsel, so that counsel can see it.

Mr. Bogle: I want to get it a little more definite.

Q. (By Mr. Bogle) Taking on the port side, your first check is what?

A. A 12 ton boiler for Blue Fox Bay. [2557]

(Testimony of Erland L. Erlands.)

Q. Mark that "A", will you?

A. All right.

Q. And the next?

A. The next is graders, for Seward, road graders.

Q. Will you mark that "B".

A. And the next one is an 8 ton boiler for Blue Fox Bay.

Q. Will you mark that "C".

A. Yes, I have that.

Q. And the next?

A. And then the fourth item is lumber for Skowl Arm.

Q. Now, go over to the port side. You need not mark the lumber.

A. That was on the port side.

Q. Now, take the starboard side.

A. Starting from aft, one dump truck.

Q. Mark that "D".

A. Yes (Witness indicates on plan).

Q. And your next?

A. The next is another dump truck.

Q. Will you mark that "E".

A. (Witness indicates on plan.) Then the next is a 20 ton rock crusher.

Q. Mark that "F".

A. (Witness indicates on plan.) Then the next one is one road grader.

Q. Will you mark that "G".

(Testimony of Erland L. Erlands.)

A. (Witness indicates on plan.) Then the next we have is an engine, a gasoline engine from Crab Bay.

Q. Mark that with "H".

A. (Witness indicates on plan.) [2558]

Q. Now, what did you have amidships?

A. Starting from aft, on No. 3 hatch we had one dump truck.

Q. Mark that with "I".

A. (Witness indicates on plan). Then on No. 2 hatch we had one tank, for Fairbanks.

Q. Mark that with "J".

A. (Witness indicates on plan). On the same hatch we had one dump truck.

Q. Mark that with "K".

A. (Witness indicates on plan). Going to No. 1 hatch, one tank for Fairbanks.

Q. Mark that with "L".

A. (Witness indicates on plan). Then we had two dump trucks on the port side on the hatch.

Q. Mark them with "M".

A. (Witness indicates on plan).

Q. How far is the well deck from your standard compass, vertically?

A. Oh, I should judge between 28 and 30 feet.

Q. This first cargo, marked "A", "J" and "D", was that the first cargo immediately forward of the bulkhead?

A. Yes, that was the first. There should be about six feet between that and the bulkhead.

(Testimony of Erland L. Erlands.)

Q. That is where it starts to load?

A. Yes. Of course we cannot put it any closer on account of the Sampson post sticks out about four feet from the bulkhead, and then your blocks of material are attached to the foot of that, so we have to allow that much space.

Q. Captain, about how far were those three objects that you [2559] have mentioned and marked as "A", "J" and "D" from your standard compass?

A. Oh, I would say around 40 or 45 feet.

Q. As you go forward, Captain, the other cargo that you have mentioned there, would that be a greater or less distance from your standard compass?

A. It would be a greater distance from the compass.

Q. How far is your forward mast from your standard compass?

A. Well, I should judge 75 or 80 feet.

Q. Of what material is that mast constructed?

A. Steel.

Q. That is a permanent part of the ship?

A. Yes, sir.

Q. How many cargo booms did you have on that mast?

A. She has got five booms.

Q. Of what material are they constructed?

A. One of steel, and four of wood.

(Testimony of Erland L. Erlands.)

Q. Have the wooden booms any steel or iron fitting of any kind?

A. Yes, sir. You have the gin blocks, and you have the iron bands, and of course you have the winch falls running through the blocks.

Q. When your cargo booms are topped how far would you say they are located from your standard compass?

Mr. Ryan: If the Court please, may I object to that?

The Court: Yes.

Mr. Ryan: On this ground; that this is the owner of the steamship that is taking this testimony, and the owner undoubtedly has the plans of the ship that would show all these locations exactly. [2560]

We have done our best to get the plans of the ship, at great inconvenience and expense, and we have produced what were delivered to us as the plans of this ship. They are marked for identification as a Claimants' exhibit, and I respectfully suggest that this is just unnecessarily encumbering the record with speculative estimates by this man regarding something that is capable of precise proof, which will require extended cross examination to show that he is incorrect in certain respects, when the matter must be definitely within the knowledge of the Petitioner, and within the knowledge of counsel for the Petitioner, from the builder's plans of the ship, which we have demanded should be pro-

(Testimony of Erland L. Erlands.)

duced, and which I again demand should be produced.

The Court: The objection is overruled. Proceed.

Mr. Ryan: Exception.

The Court: Exception allowed.

Mr. Bogle: Will you read the question? (Last question read.)

The Witness: Well, if the cargo booms are topped up, right up against the after swiffters—the after stays—we have to use sea terms in here——

The Court: I understand that term.

The Witness: Well, I should judge then the booms would be away from the standard compass, say, about 70 feet.

Mr. Ryan: May I suggest, Your Honor, at this point, that as I recall the testimony in this case introduced by the Petitioner the cargo booms were not topped up, and this witness is being asked a question here that has [2561] no value in the case at all. The question is, how far were they at the time, as the booms were left there by this man and the others——

The Court: The question is overruled.

Mr. Ryan: An exception, please.

The Court: Exception allowed. Proceed.

Q. (By Mr. Bogle) Captain, was there any cargo loaded on the “Denali” on the same level as the compasses, as either one of the compasses?

A. No.

(Testimony of Erland L. Erlands.)

Q. In your experience in loading these freighters for Alaska, was this the usual or unusual type of cargo?

A. It was a small deck load to what we had been loading.

Q. As to the character of the deck load, was it usual or unusual?

A. No.

Q. Well, I do not know what you mean. Was it a usual deck load?

A. It was the usual deck load for the Alaska run.

The Court: As to the nature of the cargo carried?

The Witness: Yes, sir.

Q. (By Mr. Bogle) Now, Captain, was there any cargo loaded aboard the "Denali" at the time she sailed next to or adjacent to the pilot house?

A. No, sir.

Q. From your experience in loading these vessels, and from your experience as a master, I will ask you if, in your judgment, this cargo which was loaded on the "Denali" would affect her compasses?

A. No. [2562]

Mr. Ryan: That is objected to on the ground that this man has not been shown to be qualified to give an opinion on that particular question, this man having admitted that he never sailed as a captain and he not being shown to have any experience that would qualify him to give testimony of that sort.

(Testimony of Erland L. Erlands.)

The Court: That objection is sustained, on the present showing of his experience in handling cargo of this nature, and observing its effect upon compasses.

Mr. Pellegrini: I ask that the answer to the question be stricken. I believe the witness answered the question.

The Court: Yes, he did, and the answer will be stricken.

Q. (By Mr. Bogle) Captain, what experience have you had at sea in the Alaska run, as an officer, on a ship where you were employed as an officer, with cargo of this character carried on deck?

A. Well, cargo of that kind, we had lots of cargo while I was sailing up there, and never experienced or heard that we had any trouble with the compasses.

Q. Over what period of years did you have experience in carrying this general character of deck cargo?

A. Since 1921.

Q. I mean did you have any experience when you were operating at sea?

A. Yes, sir.

Q. In the Alaska run?

A. Yes.

Q. Over what period of years?

A. Well, I was an officer for three years—I was second [2563] mate for two years on the steamer

(Testimony of Erland L. Erlands.)

“Skagway”, and I also was an officer on the steamer “Cordova”.

Q. During that time were you carrying cargo somewhat similar in nature to that on the “Denali”?

A. Yes, sir.

Mr. Ryan: That is objected to as leading.

The Court: That objection will have to be overruled. I am trying to find out what his experience has been, and that objection will have to be overruled. The Court desires to know what experience he has had touching the observation of the effect of such cargo on compasses.

Q. (By Mr. Bogle) During that period of three years, when you say you were an officer on vessels carrying somewhat similar cargoes, was it a part of your duty to notice what effect, if any, the cargo had on the compasses?

A. Yes, sir.

Q. From that experience do you feel that you are competent to express an opinion as to whether this cargo would have any effect upon the compasses of the ship?

A. Yes, sir.

Q. What is your opinion?

Mr. Ryan: Just a minute; may I ask a preliminary question?

The Court: No; I think not.

Mr. Ryan: If the Court please——

The Court: State your objection.

(Testimony of Erland L. Erlands.)

Mr. Ryan: I object on the ground that this man has stated that he was a second officer, and the evidence in this case shows that a second officer has nothing to do with the loading of cargo or the effect of compasses; [2564] and on the ground that as to the time he served as officer—as to that he has not yet been asked, and has not stated as to what kind of an officer he was, so we are entitled to the inference that he was a third officer.

The Court: The objection is overruled. He may now state what his opinion was.

Mr. Ryan: Exception, please.

The Court: Exception allowed.

Q. (By Mr. Bogle) Do you understand the question, Captain?

A. Yes, sir.

Q. Give your answer.

A. Those days when I was sailing as second and third mate——

The Court: You had better hold him down to the question.

Q. The question was, Captain, from your experience what is your opinion as to whether the cargo loaded on the “Denali” would or would not have any effect upon her compasses, magnetic effect.

Mr. Ryan: May I have a continued objection to this line of examination, and I now call the attention of the Court to the fact that the witness has stated that his experience at sea was as second and

(Testimony of Erland L. Erlands.)

third mate, and the evidence shows that they have nothing to do with this matter.

The Court: The objection is overruled, and it may be understood that the objection runs to any and all questions of this nature, touching the opinion of this witness on this subject.

Mr. Bogle: Yes, Your Honor. [2565]

The Court: It will be so understood.

Mr. Ryan: Also, may I add the ground that this experience of this witness is too remote, too many years before this disaster; 15 years before this disaster.

The Court: The Court has that experience in mind, and also the matter of his experience in loading cargo at the dock here during the time since 1921, and permits him to answer the question as to his opinion under those circumstances, having in mind this kind of cargo loaded on deck.

The Witness: It would be none.

Q. (By Mr. Bogle) That is your opinion?

A. That is my opinion.

Q. Captain, in your experience in sailing to Alaska were you limited to a second and third mate's position—did you hold any other position?

A. Not in the Alaska run.

Mr. Bogle: I think that is all.

The Court: At this point we will take an adjournment, and tomorrow is a Court holiday, being the 11th of November, and Armistice Day, so that

(Testimony of Erland L. Erlands.)

further proceedings in this case are adjourned until Friday morning at ten o'clock.

Mr. Summers: Just before the adjournment, in view of the fact of adjournment, Your Honor, I think Your Honor has not yet ruled, according to my recollection, upon the demand of the Claimants for the admission of the plans. Your Honor did rule as to the objection to the testimony, and that was denied——

The Court: You mean here, just now? [2566]

Mr. Summers: Yes. I am calling Your Honor's attention to a demand made for the plans of the ship, a demand made upon the Petitioner, and am requesting a ruling prior to the adjournment.

Mr. Bogle: Are you making that demand now, Mr. Summers?

Mr. Summers: Mr. Ryan made the demand, and I am calling the attention of the Court to the fact that it has not been ruled on.

The Court: What item in the order of discovery upon the application of the United States of America is that?

Mr. Summers: That was not included in that application, Your Honor, but we did——

The Court: There was something about the ship's plans included in or considered in the application, or some application for discovery.

Mr. Summers: That is true, Your Honor. There was an application made for discovery, either by the Government or by other Claimants, which did

(Testimony of Erland L. Erlands.)

include that, but the one granted by Your Honor finally did not mention that item, according to my recollection.

Mr. Long: That is my recollection, as well.

Mr. Summers: The motion for the order required the production of documents filed by the Government, which was denied by Your Honor, but which included that item, and a motion for discovery filed by Claimants, as I recall it, included that item, but the application by the Government, which Your Honor granted, and which Your Honor gave other Claimants the benefit of, did not include that specific item, and this is the first— [2567]

The Court: I will hear what, if anything, the Petitioner has to say, through its attorneys as to why the Court should not require those plans of this ship to be produced in response to this demand.

Mr. Bogle: We have none whatever, Your Honor. If we have them they will be produced. I have conferred with Mr. Long, and he states that the request was made some time ago and they have not been able to find them.

The Court: Very well. You will produce the company's plans of the "Denali", the owner's plans of the "Denali"?

Mr. Long: If they can be found.

The Court: The plans demanded by Mr. Ryan, if it is possible for you to do so, at the next session of the Court.

Mr. Long: Yes, Your Honor.

(Testimony of Erland L. Erlands.)

Mr. Ryan: May I ask Your Honor to inquire as to how much longer the Petitioner expects to take, because we are trying to expedite our side of the case.

The Court: Mr. Bogle, what is your thought now, if you have anything further to add?

Mr. Bogle: It is difficult, without knowing what the cross examination will be.

The Court: I understand that.

Mr. Bogle: There are two things that might shorten it a little bit. I was going to bring the steward here to prove the adequacy of the steward's department. Is there any controversy about that?

Mr. Ryan: No controversy about the steward's department.

Mr. Bogle: And we have subpoenaed a Government man [2568] to prove the inspection and the issuance of a certificate as to the radio department.

Mr. Ryan: I would like for you to call him.

Mr. Bogle: Well, we will call him. I think it will take us at least two days more to complete our testimony. The rest of our testimony I am going to try to get in as expeditiously as possible, and it might not be that long.

Mr. Long: Just so that the record will be clear, might it be stipulated between the respective Claimants and the Petitioner that the steamer "Denali", at the time of sailing from Pier 2, on May 16th, was in all respects properly manned, and all equip-

(Testimony of Erland L. Erlands.)

ment supplied, so far as the steward's department is concerned?

Mr. Ryan: I have gone as far as I can on this, and I do not know what the fact is, Your Honor. I was trying to narrow the issues as much as I could, and I will stand by the stipulation I made with Mr. Bogle, but I will not broaden it.

Mr. Long: Then we will call the steward, Your Honor.

The Court: The previous order of the Court as to adjournment will now become effective.

(Whereupon an adjournment was taken until November 12, 1937, at the hour of 10:00 o'clock A.M.) [2569]

November 12, 1937,
10:00 o'clock A.M.

Court convened pursuant to adjournment;

All parties present.

The Court: Are there any *ex parte* matters or matters upon agreement? If not, proceed with the case on trial.

Mr. Bogle: If Your Honor please, Mr. Lawton, the third officer has asked whether or not he has been excused. He has a chance to ship out, and I told him that I would have to find out from counsel and the Court whether he could be excused.

The Court: Is there any objection to excusing Mr. Lawton from further appearing as a witness?

Mr. Ryan: No, Your Honor.

(Testimony of Erland L. Erlands.)

The Court: You have none, Mr. Bogle?

Mr. Bogle: No.

The Court: Mr. Lawton is excused from further appearing as a witness in this case.

Mr. Bogle: Thank you. Mr. Erlands, please.

The Court: Mr. Erlands, will you resume the stand? Resume the stand. You have already been sworn?

Mr. Erlands: Yes.

ERLAND L. ERLANDS

resumed the stand for further examination, on behalf of the Petitioner.

Mr. Bogle: I have one more question that I want to ask the witness. [2570]

The Court: You may proceed.

Further Direct Examination.

By Mr. Bogle:

Q. Captain——

The Court: (Interposing) Mr. Bogle suggests that there is one more question that he wishes to ask this witness.

Mr. Ryan: At the outset today counsel for the petitioner was directed by the Court to produce the builders' plans for the "Denali". May I ask that that be done?

Mr. Bogle: Just as soon as I have asked him this one question.

(Testimony of Erland L. Erlands.)

Q. (By Mr. Bogle) Captain, what trim was the "Denali" in when you finished loading your cargo at Pier 2, do you remember?

A. Well, she was in a very good trim. If I don't remember wrong she was down by the stern a little, which is always the best for that type of vessel, to steer better that way.

Q. In your judgment was the cargo properly loaded, and was the ship in proper condition for the voyage on which she was about to—

A. (Interposing) Yes, sir.

Q. (Continuing) —engage in?

A. Yes, sir.

Mr. Bogle: Now, if Your Honor please, on the matter of these plans, the company has no detailed plans of the Steamship "Denali". What plans they had were aboard the ship. We have some plans of a sister ship— [2571] Is it not—of the "Oduna"?

Mr. Long: Yes, and they are approximately the same.

Mr. Bogle: And the "Tanana". We have some drawings of the "Oduna" here, the "Oduna", which is a sister ship.

The Court: They do not purport to be complete, do they?

Mr. Long: No, Your Honor.

Mr. Bogle: No, Your Honor, but I will show these to counsel if there is anything in here.

The Court: Does each blueprint, or photostat, or

(Testimony of Erland L. Erlands.)

drawing, show on its face what it purports to be that you have in your hand right now?

Mr. Bogle: I think it does, Your Honor.

The Court: Then submit them to counsel.

Mr. Bogle: Those are the capacity plans, counsel, relating to cargo (handing plans to Mr. Ryan).

The Court: And then will you make your statement, Mr. Bogle, finally, with respect to what you are able to produce in response to this request?

Mr. Bogle: The only thing that we are able to produce, Your Honor, are certain blueprints—photostats—of other ships—sister ships of the “Oduna”.

The Court: Of the “Denali”, you mean?

Mr. Bogle: Yes, of the “Denali”. I beg your pardon. We have no other plans.

Mr. Ryan: Here is a plan, for instance, that counsel produces that does not say anything about the “Denali” on it at all. [2572]

The Court: Well, I understand—

Mr. Ryan: (Interposing) Or has anything to do with reference to the sister ships of the “Denali”, and it refers to hull numbers. Now, I would like counsel to prove the hull numbers, or the hull number there is the hull number of the “Denali”, because the information that I have is that it is a different hull number.

Mr. Bogle: I cannot say, Mr. Ryan, that this is a sister ship.

(Testimony of Erland L. Erlands.)

Mr. Ryan: No, but you could call Mr. Murphy or somebody who would know.

Mr. Bogle: Well, if it will do any good I will be glad to call Mr. Murphy back.

The Court: Yes. I think that that is a reasonable suggestion. Won't you call somebody whose duty it is and who has information about those drawings?

Mr. Long: The copies that we had in relation to this ship I am advised were aboard the ship for the engineer's use and purposes, and, of course, they were lost with the ship.

The Court: Try to have the official of the company whose duty it is to know and who would know about these drawings—try to have him testify regarding them.

Mr. Bogle: Mr. Summers suggests that he give us the hull numbers of their plans and that we check with Mr. Murphy and see if we have them.

The Court: Very well.

Mr. Bogle: He has given me those numbers, and I will check it with Mr. Murphy. I am perfectly willing [2573] to make this suggestion, Your Honor, that if counsel would prefer to defer this cross examination of this witness until we have checked these plans, it is quite agreeable to me.

The Court: Would you like to do that?

Mr. Ryan: Yes. I would like to know the lay-out first.

(Testimony of G. Edwin Thompson.)

The Court: Very well. Then you have finished your direct examination?

Mr. Bogle: Yes, Your Honor.

The Court: Then you may, Captain, be excused from the stand and you will be subject to be called back on the stand for cross examination.

The Witness: All right, sir.

(Witness Excused)

Mr. Long: I will call Mr. Thompson.

G. EDWIN THOMPSON,

called as a witness on behalf of Petitioner, being first duly sworn, testified as follows:

The Court: At this time you will not likely be using these documents that have to be folded up, will you?

Mr. Bogle: No.

The Court: Is this one of the exhibits already in, Mr. Clerk?

The Clerk: This is the cargo stowing plan.

The Court: I see. You may proceed. [2574]

Direct Examination.

By Mr. Bogle:

Q. State your name.

A. G. Edwin Thompson.

Q. Where do you live, Mr. Thompson?

A. My home address?

(Testimony of G. Edwin Thompson.)

Q. Yes. Seattle?

A. Seattle, yes.

Q. What is your business?

A. Navigation instruments.

Q. With what firm are you connected?

A. The Northwest Instrument Company.

Q. In what capacity?

A. A member of the firm.

Q. And particularly what does that firm deal in?

A. All kinds of navigation instruments and repairing and compass adjusting.

Q. In the firm of the Northwest Instrument Company who attends to the compass adjustment?

A. My partner, Mr. Kauffman, and myself.

Q. How long have you been engaged as a shore compass adjuster?

A. Twenty years.

Q. What sea experience have you had, Mr. Thompson?

A. None.

Q. And how long have you been engaged in the Port of Seattle as a compass adjuster, or as a shore adjuster?

A. Twenty years.

Q. What other firms are engaged in that business in this port? [2575]

A. There is the firm of Max Kuner Company.

Q. Do you know of any other compass adjusters here?

A. No, not professionally.

(Testimony of G. Edwin Thompson.)

Q. Mr. Thompson, did you swing the "Denali" and compensate her compasses in July of 1933?

A. I did.

Q. Have you your notes that you took at that time?

A. Yes, sir.

Q. Will you produce them?

A. I have my original notes here in this book (indicating).

Q. From those notes have you made up an exact duplicate of the deviation cards which were given to the "Denali" as a result of swinging her and compensating her compasses in July—on July 21, 1933?

A. I have.

Mr. Bogle: Will you mark these, please, Mr. Clerk?

(Documents referred to marked for identification as Petitioner's Exhibits Nos. 62 and 63.)

Q. (By Mr. Bogle) I hand you Petitioner's Exhibits 62 and 63 for identification, and I will ask you if those are exact copies of the deviation cards prepared by you for the standard and pilot house compasses of the "Denali" as a result of swinging her and compensating the compasses on July 21, 1933—in July, 1933?

A. They are.

Mr. Bogle: I will hand those to counsel preliminarily to offering them in evidence.

(Testimony of G. Edwin Thompson.)

The Court: A reasonable opportunity will be given to counsel to inspect them. [2576]

Mr. Ryan: I object to them as copies. They are not the originals. I would like to have the originals produced.

Mr. Bogle: Well, the evidence already shows that the originals were lost, Your Honor, and I am having the man who made the originals from his original notes prepare an identical copy.

Mr. Ryan: What I mean, his original notes with reference to that. This is just a copy that you had made here within the last few days, as I understand it.

Mr. Bogle: Yes. It is what——

Mr. Ryan: (Interposing) Then I object to it.

Q. (By Mr. Bogle) To your own knowledge are these an exact duplicate of the two deviation cards which you prepared and furnished the "Denali" in July, 1933?

A. They are, exactly.

The Court: They were made up when?

The Witness: They were made up a couple of weeks ago.

The Court: For the purpose of this trial?

The Witness: Yes.

Mr. Bogle: Yes, Your Honor.

The Court: And not at the time that you did the work?

The Witness: No, sir.

The Court: In the course of your business and

(Testimony of G. Edwin Thompson.)

in the manner that you usually make a record of that sort?

The Witness: No, sir. The record that we made at that time—those records are left on board. We have a book record and the originals are left on board. [2577]

The Court: On that proof, Mr. Bogle, it seems to me that they are not admissible.

Mr. Bogle: I thought in view of the fact of the proof that the originals were destroyed, the man who prepared the originals and who has his original notes here——

The Court: (Interposing) No. In view of the purpose for which they were made up it seems to me clearly that the objection is tenable. If they were copies made at that time——

Mr. Bogle: (Interposing) No, they were not.

The Court: (Continuing) ——and the originals of such copies were later destroyed they, under the circumstances, might come under the secondary evidence rule. But I do not see how they may now be received in evidence in view of the witness' testimony.

Q. (By Mr. Bogle) Have you your original notes with you?

A. Yes, sir.

Q. In what form are they kept?

A. In a book.

Q. Are there notes with reference to any other compass adjustments of any other boats in the same book?

(Testimony of G. Edwin Thompson.)

A. Yes, sir.

Q. Mr. Thompson, could you tear out the page that relates to this adjustment?

A. I could, but I would prefer not to.

Q. You would prefer not to?

A. Yes, sir.

The Court: Perhaps you can——

The Witness: (Interposing) There is a record on [2578] the other side of that page, too.

The Court: Perhaps you can have it identified. After that is done maybe you might reach some agreement about it.

Q. (By Mr. Bogle) Will you identify the page?

A. This page (indicating in book).

Q. Is this the page in this book that you have handed to me (indicating)?

A. Yes, sir.

Mr. Bogle: I will have that marked.

(Page in book of the witness G. Edwin Thompson marked for identification as Petitioner's Exhibit No. 64.)

Q. (By Mr. Bogle) The page marked Petitioner's Exhibit 64—are those your original notes from which the deviation cards for the "Denali" were made up in July, 1933?

A. Yes, sir.

Mr. Bogle: I would suggest that we have a photostat taken of that, and I will offer it in evidence.

Mr. Ryan: Now, if the Court please, I was not given a full opportunity to look at the original

(Testimony of G. Edwin Thompson.)

records of this man when I went down there pursuant to the Court's order. In view of that I stand on my legal rights. I object to any photostat being substituted. I want to see the original of that, and I want to examine whatever paper or book this man produces, to check whether this statement is correct and to see if there is not anything else in there pertaining to this.

The Court: There is nothing before the Court.

Mr. Ryan: I thought that he was offering it in [2579] evidence.

The Court: No, not yet.

Mr. Ryan: Oh, I beg your pardon.

The Court: He spoke of intending later to do so, but before doing so he was going to obtain a photostatic copy of that page.

Mr. Ryan: I will withdraw that statement, then, if it is not offered yet.

The Court: Very well. Let the record show that the statement made by Mr. Ryan is withdrawn.

Mr. Long: Now, if Your Honor please, I do not want the Court——

The Court: (Interposing) Proceed, gentlemen. A supposed volunteered statement that counsel makes is of no concern to the Court anyway, so there is no need of cluttering up the record with a responding statement by counsel.

Mr. Long: If the Court please, I do not want the Court to get the impression that this man was not given the opportunity to go down there——

(Testimony of G. Edwin Thompson.)

The Court: (Interposing) Proceed. I do not see where this is material.

Q. (By Mr. Bogle) Mr. Thompson, on the opposite page you have the original notes of the adjustment of an entirely different ship, have you not—on the other side of this page?

A. Yes. You could tear it out, if you want to, as long as I get it back.

Q. Yes, I will do that.

Mr. Ryan: I object to that being torn out, if [2580] that is the original.

Q. (By Mr. Bogle) I will ask you if page 64 is the only page in that book which contains any data or any information of any kind or character relating to the swinging of the Steamship "Denali" and compensating her compasses in July, 1933?

A. It is.

Q. Will you tear that page out?

Mr. Ryan: Just a minute. I object to the witness tearing from the original record in that fashion. I want to take that book and check it to see whether there is anything else in that book relating to the "Denali's" adjustment of compasses on this voyage.

Mr. Bogle: He can do that on cross examination.

Mr. Ryan: I am not bound to take the witness' statement on that. I really feel that I have good grounds for suspicion on this particular matter.

Mr. Long: What are your grounds?

(Testimony of G. Edwin Thompson.)

The Court: Just a minute. The Court does not feel, over objection, that one page in a bound book should be permitted to be torn out for the purpose of identification or for the purpose of introduction in evidence.

Mr. Bogle: If Your Honor please, he has testified that that is the only thing in the book pertaining to the adjustment of the compasses on the "Denali", and I am quite willing that counsel should examine the book and examine the witness with reference to any other entries in the book, but I would like to offer that page at this time and ask the privilege of the Court in having [2581] the clerk make a photostatic copy for the witness' own use, so that the witness will have a photostatic copy of it in his possession.

The Court: I can only act upon its admission in evidence at this time. As to having a photostat made up later and using it in substitution for it, the Court would have to entertain and determine that question later.

Mr. Bogle: Then at this time I will offer the page and the book in evidence which relates to the "Denali".

The Court: It is admitted as Petitioner's Exhibit 64.

(Whereupon book of G. Edwin Thompson, containing compass adjustment of the SS "Denali" was admitted in evidence as Petitioner's Exhibit No. 64'.)

(Testimony of G. Edwin Thompson.)

Mr. Ryan: Wait, Mr. Witness. Don't tear that page out.

The Court: Oh, no. The Court has not authorized the witness to tear anything out.

Mr. Bogle: That is my mistake.

The Court: Oh, no; do not tear anything out.

Mr. Bogle: That is my mistake. I thought I was offering the one page.

The Court: Oh, no.

Mr. Bogle: Do I understand the Court's ruling is that the entire book is put in evidence?

The Court: That page with its present attachment is received in evidence in its present physical condition as Petitioner's Exhibit 64. [2582]

Mr. Bogle: Well, that means that we would have to retain the entire book in the records of the Court, does it?

The Court: That means just that.

Mr. Bogle: Then I will withdraw that. I do not want to embarrass the witness by having the book left here.

The Court: The Court has already acted upon it. It has been admitted in evidence. You wish to withdraw the book?

Mr. Bogle: Yes. It covers a lot of compass adjustments over a period of years.

The Court: Do you have any objection, Mr. Ryan, to its being withdrawn?

Mr. Ryan: Yes, I do.

The Court: Very well, then. Proceed.

(Testimony of G. Edwin Thompson.)

Mr. Bogle: Will counsel agree that after examining it, that we may return to the witness any portion of the book that is not material?

Mr. Ryan: I will assure you that I will examine it at the first opportunity, and if I find that that is the only page in the book which relates to this voyage of the "Denali" I will be glad to cooperate fully in the matter.

The Court: Proceed.

Q. (By Mr. Bogle) Mr. Thompson, are you familiar with the custom in the Port of Seattle with reference to compass adjustments?

A. Yes, sir.

Q. What is the custom in this port as to passenger and [2583] freight vessel with reference to compass adjustments?

A. There is no custom.

Q. Under what circumstances are their compasses adjusted?

A. Usually on the request of the master.

Q. Do you know of any common carrier of passenger or freight operating out of the Port of Seattle which has its compasses adjusted at any regularly stated intervals?

A. I do not.

Q. Mr. Thompson, assuming that the Steamship "Denali" on May 13, 1935, while lying alongside the West Seattle Dock on a known heading of the dock West Northwest Magnetic, took bearings of two well known objects in the Port of Seattle and

(Testimony of G. Edwin Thompson.)

checked her compasses; that on the magnetic course of Northeast by North $\frac{1}{2}$ North laid on the chart she again checked her compasses while running on that course; that while lying alongside the Arden Salt Dock on a known heading of East Northeast she again checked her compasses, by standard compass; that on a West-Magnetic course West by North $\frac{1}{2}$ North laid out on the chart she checked her compasses in running that course to Pier 40; that while lying alongside Pier 40 on a known heading of North Northwest Magnetic the ship's compasses were checked; and that on a course of East by South Magnetic the ship's compasses were checked; and again on a heading at the American Can Dock of East Northeast the ship's compasses were checked by taking a bearing of an object at the Colman Creosote Company; and on the course Southeast by East Magnetic the ship's compasses were checked; and that on a heading [2584] of West Southwest of the Pacific Coast Coal bunkers the compasses were checked while lying alongside; and that on the heading of South Southeast, while alongside the General Petroleum Corporation's plant the compasses were checked; and again while lying at Pier 2 on a known heading of East Northeast the compasses were checked, and that on all of those various checks there was no error in excess of two degrees, in your experience of twenty years as a compass adjuster would you say that a prudent, cautious shipmaster should or should not have re-

(Testimony of G. Edwin Thompson.)

quested the vessel to be swung for compensation by shore adjuster?

A. Certainly not, if I was——

Mr. Summers: (Interposing) Just a minute, if you please. That is objected to on the ground that it is not shown by that question that the compass was checked against points the position or location of which was known. In other words, as far as the question is concerned the points against which the compass was checked must be accurately identified or known with respect to the correction on the compass or compasses.

Mr. Bogle: I asked him to assume in the question if he checked on these bearings on known objects in the Port of Seattle or on known headings of docks and on magnetic courses to steer.

The Court: Is that a part of the question?

Mr. Bogle: That was a part of my question. I asked him to assume that.

Mr. Summers: Mr. Bogle says, "known objects", but he did not assume in the question that the position of [2585] those objects—for instance, the Smith Tower—he did not assume in that question that the compass position or location of the Smith Tower has been known.

Q. (By Mr. Bogle) If the position was known in the port upon which he checked, would it make any difference in your answer, whether I told you what the actual object was or not, if it was told on the check or known to the master?

(Testimony of G. Edwin Thompson.)

A. If he knew the object he could check the compass.

Q. Yes, I have asked you to assume that.

The Court: Objection overruled, in view of the witness' answer.

Mr. Ryan: I was going to add a further objection——

The Court: (Interposing) You may make a further objection if you wish to make any.

Mr. Ryan: Yes. I object on the further ground that it does not assume facts as established by the record.

The Court: The objection is further considered by the Court upon that further statement, and the objection is overruled.

Mr. Ryan: May I have the last five or six words of the question read?

(Portion of question read as follows:

“Would you say that a prudent, cautious shipmaster should or should not have requested the vessel to be swung for compensation by shore adjuster?”) [2586]

Mr. Ryan: If the Court please, I did not catch those words when the question was asked. I object on the ground that this witness has not been qualified to give an opinion with respect to what a shipmaster should do. He can give his own opinion, based on his experience, but as to what a shipmaster should do, or what the duty of a shipmaster

(Testimony of G. Edwin Thompson.)

is, that is entirely outside of the ken of this man. He has admitted he has never had any experience at sea whatever.

The Court: It relates to this subject, however, of adjusting compasses, which he has testified he is experienced in, as I understand it.

Mr. Ryan: The thought I had is that he is being asked in this question to state what a ship master should do, not what this witness thinks should be done on those facts, and that sort of thing. Suppose I should say a doctor should have treated this man for this disease, or something of that sort—I am not a doctor, I cannot pass on what the duties of a doctor are, or what his competency is, or how he should diagnose it—or what a ship master's ideas of it are. This man is in an entirely different line of work.

The Court: If, however, you are skilled in the use of some instrument the doctor ordinarily uses the Court would think the question would be proper.

Mr. Summers: May I supplement the objection to this extent; I submit the question might be proper if counsel asked under those circumstances what, in his opinion, would be the condition of the compasses with respect to deviation, or otherwise, not as the [2587] question is propounded, what should a ship master do.

Mr. Ryan: Might I further suggest that the record already shows that instructions are issued to ship masters by ship owners with respect to their

(Testimony of G. Edwin Thompson.)

duties, and with respect to what they shall do, and the managing officers of ship owners have certain duties in connection with the compasses. All that is slurred in the form in which this question is asked.

The Court: The matter as further considered, upon these further statements, the ruling of the Court heretofore made will stand.

Mr. Ryan: Exception.

The Court: Exception allowed.

Q. (By Mr. Bogle) Mr. Thompson, assuming the question that I have just asked you, in your judgment as a compass adjuster of some twenty years experience, would you say that the compass of the "Denali" was or was not in proper compensation, proper adjustment, for the voyage upon which she was then about to engage?

Mr. Ryan: Just a minute; has the last question been answered?

Mr. Bogle: That is the further question, that they suggested I should have asked him before.

Mr. Ryan: I suggest that the question should not be asked until the witness answers the question that has been asked.

The Court: I do not know of any unanswered question.

Mr. Ryan: What was that question?

The Court: The Court would be glad to have it read.

(Testimony of G. Edwin Thompson.)

Mr. Ryan: I haven't heard any answer. (Answer read [2588] as follows:

“A. Certainly not, if I was——”)

Q. (By Mr. Bogle) Is there anything further you want to add to that?

A. No.

Q. Then answer the question which is before you.

A. I have lost the question now.

Q. This is the first question: Assuming the master took the bearings on the various courses and various headings that I outlined to you, the first question is whether or not, in your judgment, a competent ship master should have asked for an adjustment by a shore adjuster?

A. I would say not.

Mr. Ryan: To save repetition may I ask that the objections of myself and Mr. Summers, on the grounds stated, may be understood to be repeated to each one of the questions along this line of examination, and that an exception may be noted to each question.

Mr. Bogle: It is immaterial to me, Your Honor.

The Court: It is so understood.

Q. Have you any further answer that you desire to make to that?

A. I could say this, in swinging on all those headings there would be a course in each quadrant, and if nothing over two degrees was found there would be no large deviations any place.

(Testimony of G. Edwin Thompson.)

Q. Now, answer the other question. Read it.
(Question repeated as follows:

“Q. Mr. Thompson, assuming the question that I have just asked you, in your judgment as a compass adjuster [2589] of some twenty years experience, would you say that the compass of the ‘Denali’ was or was not in proper compensation, proper adjustment, for the voyage upon which she was then about to engage?”)

A. I would say that they were within very close working limits, anyway.

Q. Mr. Thompson, did your firm do the compensating of compasses for the Alaska Steamship Company, did they in 1935?

A. Some of it.

Q. From whom do you receive your instructions with reference to compass adjustments?

A. From the superintendent’s office.

Q. Do you know his name?

A. Mr. Murphy at that time.

Mr. Bogle: I think that is all, Your Honor.

The Court: You may cross examine.

Cross Examination.

By Mr. Ryan:

Q. All orders that you have ever gotten from the Alaska Steamship Company for the adjustment of compasses have been from Mr. Murphy, haven’t they?

A. Yes, sir.

(Testimony of G. Edwin Thompson.)

Q. You haven't the vaguest idea as to whether Mr. Murphy decided for himself the compass should be adjusted, or whether somebody else did, have you?

A. I have some idea, yes.

Q. It is a guess; it is not based on any personal knowledge, [2590] is it?

A. Yes. Very often the master comes in and says "I am going to request to have the compasses adjusted."

Q. Did he do that in this case?

A. I can't remember that.

Q. What did he come for, to try to enlist your cooperation in inducing Mr. Murphy to spend the few dollars necessary for that purpose?

Mr. Bogle: What was that question? (Question read.)

The Witness: The answer is no.

Q. Then why does he do it?

A. He happened to be in there on other business, probably.

Q. He has no authority at all to give you the order, isn't that so?

A. Yes.

Q. You know he has no authority?

A. Yes.

Q. What, in your opinion, does good practice with reference to vessels engaged in the Alaska trade require with reference to the frequency of adjustment of compasses?

(Testimony of G. Edwin Thompson.)

A. I would say whenever it needs it.

Q. What interval of time, how frequently?

A. Whenever it needs it.

Q. Did you or did you not state on August 7, 1935. in the City of Seattle, in the offices of the Northwest Instrument Company, to Lewis L. Stedman, of Seattle, as follows: Good practice, particularly with reference to vessels engaged in the Alaska trade, would require that compasses be adjusted not less frequently than once every two years. However, this practice is not universally [2591] followed. At least, the Alaska Steamship Company does not follow this practice." Did you or did you not so state?

A. I did not say that.

Q. Did you state any part of it?

A. Probably I might have said part of it.

Q. All right; what did you state?

A. I didn't mention the Alaska Steamship Company, in any case. I didn't mention the Alaska boats, either.

Q. Well, what did you state about good practice with reference to the frequency of adjustment of compasses on vessels engaged in the Alaska trade, at that time and place?

A. I couldn't remember every word I said, but I did some of it.

Q. What is the substance of what you said at that time?

(Testimony of G. Edwin Thompson.)

A. We were not discussing the Alaska boats. It was more other companies' boats.

Q. What did you state?

A. I did say to him there were certain companies operating boats here that had not had their ships adjusted for a good many years.

The Court: You mean had not had their compasses adjusted?

The Witness: Had not had the compasses adjusted on their boats for several years.

Q. Is that all you said?

A. I said more than that, but that is the substance of what I said.

Q. What else did you say? [2592]

A. That is the substance of what I said.

Q. Do you deny that you stated at that time and place to Mr. Stedman as follows, "Good practice, particularly with reference to vessels engaged in the Alaska trade, would require that compasses be adjusted not less frequently than once every two years." Do you deny you stated that?

A. I deny I stated those words.

Q. Did you state the substance of it?

A. I didn't say that.

Q. What did you say?

A. I just told you what I said.

Q. What happens to a ship when she is laid up in a boneyard over a long period, out of operation, so far as—what happens to her?

A. I suppose she lays there.

(Testimony of G. Edwin Thompson.)

Q. All right. Well, what is the result of her lying there?

The Court: With respect to what?

Q. With respect to her compasses and her magnetism, and that sort of thing?

A. It depends on what heading she is on, and what the conditions are there; if there is any jarring, if she is lying still, how long it is, what the surrounding iron is—there is a thousand and one things that would enter into it.

Q. Will you go on and state some of the conditions which would affect the compasses of a ship?

A. No two boats are alike.

Q. Will you state the conditions that would affect the compasses of a ship, or ships lying in a boneyard for a [2593] long period, out of operation?

A. I couldn't say anything definite. Nothing definite happens. No two boats are alike, or would act the same.

Q. Have you ever discussed compass adjustment with Mr. Murphy?

A. Sure.

Q. If Mr. Murphy has testified here that a ship under those conditions acquired retained magnetism, and in such a condition a shore compass adjuster will refuse to adjust her compasses until she got rid of it in some way, do you agree with that statement?

(Testimony of G. Edwin Thompson.)

Mr. Bogle: I shall object to that. If Mr. Murphy so testified, which is not in accordance with my recollection, I think counsel should refer to Mr. Murphy's testimony.

The Court: It is assuming that Mr. Murphy did so testify. Will you kindly condition your question in that way?

Mr. Ryan: Yes, Your Honor.

Q. (By Mr. Ryan) Assuming that Mr. Murphy so testified.

A. Some ships do take on a temporary magnetism, yes, and if the compass were adjusted the minute that she left the shipyard it would only be a very few days until it would lose that magnetism and the compass would be off again, and we do very often refuse to adjust a compass until the boat has had a good shaking up. In fact, after a boat has laid up we put her on an opposite heading to what she has been lying and back her up two or three times to give her a good shaking down, to settle the magnetism. On some ships it makes some deviation, [2594] and on some it does not.

Q. I am sorry, but in asking you the question about your statement to Mr. Stedman I mentioned the date as August 2nd, 1935, and it was August 7th, 1935. Does that make any difference in your answers?

A. No. I would remember the day.

Q. It was not made at any time in August, 1935, or any other time, is that right?

(Testimony of G. Edwin Thompson.)

The Court: The subject is covered by a preceding question. Proceed.

Q. Now, hasn't it been the practice of the Alaska Steamship Company in the last few years, on taking ships out of a boneyard, on account of this retained magnetism in them, to send them up on one voyage to Alaska first, to shake it out, and then have the compass adjusted at the end of the first voyage of the season?

Mr. Bogle: I object to that, if Your Honor please, unless it is limited to some specific time; at least sometime prior to the accident in question. He says "the last few years". I think Your Honor limited the period to prior to the accident.

The Court: The objection is overruled.

Mr. Long: An exception, Your Honor.

The Court: Exception allowed.

The Witness: I do not believe they have any general practice.

Q. (By Mr. Ryan) Well, that danger or hazard does exist of this retained magnetism being in a ship after she has been lying in a boneyard for a long period on one heading, isn't that so? [2595]

A. There is a possibility of it.

Q. Well, it is a scientific fact, isn't it, Mr. Thompson?

A. No.

Q. It is not a scientific fact?

A. Not necessarily.

Q. What kind of a fact is it?

(Testimony of G. Edwin Thompson.)

A. Well, it does happen, according to what heading she is on.

Q. Can you name me any instance of a ship which has lain for a long period in a boneyard, on one heading, that has not been affected by retained magnetism?

A. How much would you say it was affected?

Q. I am asking you. You are the one who brought this up. You give me the name of a ship that has not been, and where you have looked at her compasses after this happened.

A. The "Vermont", which was laid up for eight years out here in Lake Union.

Q. The "Vermont"?—When did you adjust her compasses?

A. I adjusted them twice.

Q. Is that in this book here?

A. No.

Q. Where is your book with reference to the "Vermont"?

The Court: We are not going to go into such collateral matters as that.

Mr. Ryan: If Your Honor please, I would like to check him on that. I mean I think we can demonstrate that——

Mr. Long: (Interposing) That is objected to, Your Honor, as being a collateral issue, entirely collateral.

The Court: If he has his book here he may produce [2596] it.

(Testimony of G. Edwin Thompson.)

Q. (By Mr. Ryan) Have you the other records of your company with reference to the adjustment of the compasses of the "Denali" in July, 1933?

A. What was that, again? (Question read.) That is all the record we have.

Q. You have some other books there.

A. This is all we have.

Q. You do not keep books down at your office, is that it?

A. Yes; we do.

Q. You have records of the adjustment of the compasses of the "Denali" in those books, haven't you?

A. No. That is the record of the adjustment.

Q. You do not have invoices, you do not have ledgers, day books, journals, anything like that, relating to the "Denali"?

A. There is no record of the adjustment in them.

Q. There is no reference to the "Denali" in those books, is that what you mean to say?

A. There is a bill for adjusting, and that is all.

Q. Have you got that?

A. No; not here.

Mr. Ryan: I would like to see that, and in view of the fact that he will have to get that, Your Honor, I ask that he get the record with reference to the "Vermont".

Mr. Bogle: It is already here in evidence, Your Honor; it is an exhibit that has been already produced.

(Testimony of G. Edwin Thompson.)

Q. (By Mr. Ryan) Wasn't this "Vermont" anchored in Lake Union? [2597]

The Court: Just a moment, Mr. Ryan; unless the statement of counsel for the Petitioner is erroneous about that bill or voucher being here in evidence, the witness is relieved from the demand which you just made for the production of that particular bill. You may propound your question.

Mr. Ryan: Well, Your Honor, I got the impression when I was down to the Northwest Instrument Company that they had a book that related to this, and that would contain their record of this.

The Court: You can subpoena that as part of your case.

Mr. Ryan: All right.

Q. (By Mr. Ryan) The "Vermont" was out at anchor in the open lake, wasn't she?

A. Yes; alongside of three other boats.

Q. Certainly; and they would swing around with the tide, wouldn't they?

A. No.

Q. How do you know that?

A. They had anchors both fore and aft to hold them steady.

Q. Were you there all the time?

A. No.

Q. They were not near any other steel vessels, were they?

A. These four were by themselves.

Mr. Long: These four?

(Testimony of G. Edwin Thompson.)

The Witness: These four vessels.

Q. Did you examine the compasses of the "Vermont" before she was laid up?

A. No. [2598]

Q. Then how do you know that the laying up did not affect them?

A. We adjusted it when she left the shipyard, and then we adjusted it again—

Q. Did you adjust them when she left the shipyard?

Mr. Long: Let him finish his answer.

Mr. Ryan: The answer is no.

The Court: Objection overruled.

Mr. Ryan: He just answered no.

Q. (By Mr. Ryan) Then you didn't know of your own personal knowledge what the condition of the compasses of the "Vermont" was before the lay-up?

A. No.

The Court: Which illustrates the undesirability of all this collateral matter.

Mr. Ryan: I understand, Your Honor. I was hoping that it would be helpful, but I find out he didn't even know.

Q. (By Mr. Ryan) Now, assuming that a ship which has been laid up for a considerable period has acquired this retained magnetism that you have mentioned, what should the shipowner do with that

(Testimony of G. Edwin Thompson.)

ship before he loads cargo on it, or sends it to sea on a voyage, a commercial voyage?

A. Take deviations.

Q. What should he do about getting rid of that retained magnetism before he loads cargo and sends it to sea; that is, what would good and safe practice, in your opinion, require to be done?

A. Move the ship around from one heading to another.

Q. Take it on a shake-down cruise, as Mr. Murphy described [2599] it--assuming he did so describe it--isn't that so?

A. You could call it that.

Q. And there have been such shake-down cruises up to Alaska and back, the first voyage of the season, often, have there not?

A. Probably.

Q. Well, you know of them of your knowledge, don't you?

A. We don't know anything about what happens to the boat from one trip to the other. We do not keep track of them.

Q. You know about these so-called shake-down cruises, the first voyage up to Alaska and back, until they get rid of that retained magnetism? You have often heard of that?

A. They do not make the trip for that purpose.

Q. Well, that expression, "shake-down cruise", with reference to these ships that are subjected to this unusual hazard of retained magnetism out here

(Testimony of G. Edwin Thompson.)

in this boneyard, is a very common one around Seattle, among ship masters, ship owners and their compass adjusters?

A. It is generally good practice to put the boat on several headings before they have the compass adjusted.

Q. Well, you have to do more than that, just put her on several headings; you really ought to get her out to sea and put her on the opposite course, or at right angles to the course, and back at full speed, and get her out in the seaway, and shake out as much of that retained magnetism as you can, shouldn't you? I mean if you follow safe practice?

A. The more they could do that the better, of course.

Q. Why, certainly. A ship which comes out of a boneyard, after lying there for a long period, is in a peculiar [2600] condition, in that something should be done to get rid of that magnetism she acquires; that is so, isn't it?

Mr. Bogle: I think I shall object to that on the ground that it is too indefinite. He has used the phrase "long period", and I think he should specify what it was.

The Court: The objection is overruled. This is cross-examination, and if any further explanation is needed, or is appropriate, you may redirect. Read the question. (Last question repeated.)

The Witness: I would say yes.

Q. (By Mr. Ryan) Now, a ship which has ac-

(Testimony of G. Edwin Thompson.)

quired this retained magnetism by lying up for a considerable period in a boneyard becomes, in a substantial sense, a magnet herself, doesn't she?

A. A temporary magnet.

Q. Yes; and if she has been lying up, say, on a West Northwest heading, the red pole of the magnet would be her starboard bow and the blue pole her port quarter, wouldn't it, if you sent that ship out to sea?

A. Yes.

Mr. Long: I didn't get the answer.

Mr. Ryan: The answer was yes.

Mr. Bogle: Did you answer that question?

The Witness: Yes.

The Court: Make your answers more audible.

Q. (By Mr. Ryan) If that ship were taken out to sea, and then she were set on that same heading that she had been lying up all that time, and the engines were kept full speed ahead, and the vibrations shaking her all the time, and everything else, all that would tend to further [2601] increase her magnetism, wouldn't it, provided she kept on that same heading?

A. Yes.

Q. Then the first time that ship would make a swing to the right, toward the North, a substantial swing, say 30 degrees or more toward the North, then after she stayed on that a while, on that new heading, there would be a tendency for that compass

(Testimony of G. Edwin Thompson.)

to swing back toward the heading on which the ship was lying during the lay-up, isn't that right?

A. That is right.

Q. That is a well known principle of hysteresis?

A. It is.

Q. That is, it is a well known fact that iron has what is called a magnetic memory, isn't that so?

A. You could call it that, yes.

Q. So that after a substantial period has gone by on this new course there is a lag back to the old course—I mean back to the heading on which the ship had been lying, isn't that so? [2602]

Q. Has the Alaska Steamship Company ever given you a free hand and unrestricted authority to go on board their ships here in Seattle and examine their compasses and determine for yourself that the compasses should be adjusted, without any order from Mr. Murphy?

A. No.

Q. You could do that, could you not, if you were given such authority?

Mr. Bogle: I object to that.

A. No.

Q. (By Mr. Ryan) You could not do it?

A. No.

Q. Why not?

A. You could only check it on one heading as lying alongside of any dock, but that would not—

Q. (Interposing) But if they gave you authority to take the ship out here, or send her out on a

(Testimony of G. Edwin Thompson.)

shake-down cruise to get rid of her retained magnetism, and then come back, and then do your adjusting, and left the whole thing to you, to examine the compasses and determine what was necessary, you could easily do that here, could you not—your company?

A. Not alongside——

Q. (Interposing) That is, if you had the authority.

A. Not alongside the dock unless we looked at the records.

Q. I see. You do not get any real information from bearings taken while the ship is lying alongside the docks here in Seattle, is that what you want to say?

A. Yes, you do. You get a very definite deviation on that heading. [2603]

Q. Say there is an iron crane on the dock, or an iron roof on the transit shed, or machinery around, or the cargo boom is swung out, or the blocks are out and the falls—all those things would affect the compasses, would they not?

A. There are no cranes on any of these docks.

Q. Well, eliminating the cranes, would not all those things that I have mentioned affect the compasses on the ship?

A. It would depend on the mass; how much mass there was to it.

Q. Yes, certainly, but it would affect the compasses, wouldn't it?

(Testimony of G. Edwin Thompson.)

A. Yes; if there was enough mass.

Q. And by "mass" you mean weight and volume, and that sort of thing?

A. Volume, principally.

Q. Yes. And when you adjust compasses you do it away from the docks, don't you—you take your bearings and all that sort of thing?

A. Yes, sir.

Q. Now, what are the advantages of an adjusted or compensated compass over one which is not adjusted or compensated?

A. On a compensated compass the errors are reduced to a minimum.

Q. What other advantages are there to a compensated compass over an uncompensated compass?

A. That is the only advantage.

Q. That is the only advantage? [2604]

A. Well, we leave a record of what the residual deviation is.

Q. Well, you know what over-compensation is, and what under-compensation is, don't you?

A. Yes.

Q. Well, what is over-compensation?

A. Well, if you over-compensate it, you would cause an error.

Q. Certainly. An erratic error, wouldn't you—I mean it would be irregular on the headings?

A. It depends on how much it was over-compensated.

Q. Yes, but I mean the tendency would be to cause irregularity?

(Testimony of G. Edwin Thompson.)

A. Only on large deviations.

Q. That is right. It causes large deviations and irregularity on the headings, does it not?

A. No. Large deviations cause the compasses to be unsteady or irregular.

Q. And what does under-compensation do?

A. The same.

The Court: I suggest that unless you seek to lay the foundation by showing that these compasses on the "Denali" were over-compensated, you need not take up the time of the Court by having this general discourse on the subject.

Mr. Ryan: I think Your Honor misunderstands what the term means.

Q. (By Mr. Ryan) Now, when a compass needs adjustment, what is the condition of the compass before she needs adjustment? [2605]

A. She has large errors.

Q. Well, one of the ordinary things is that she is under-compensated or over-compensated as a result of acquiring magnetism in some new direction, or something of that sort, isn't that so?

A. Yes. Either acquiring it or losing it—having less.

Q. Now, what are the various reasons which require compasses to be adjusted?

A. Alterations on the ship—

The Court: (Interposing) That is of such a very general nature as to be of no benefit to me, it seems to me, at this stage of the trial.

(Testimony of G. Edwin Thompson.)

Mr. Ryan: If the Court please, this is the first compass adjuster that has been called in the case. He has been called as an expert witness, and this cross-examination is necessarily going to be extensive because this point I consider very important.

The Court: You do not need to have him give a lecture on the full science or the whole field of compass knowledge. Just get to the things that are involved here. All these other general scientific elements and phases of the compass are not involved here.

Mr. Ryan: I see. I will abbreviate it as much as I can, Your Honor.

Q. (By Mr. Ryan) Is it not a fact that among the general advantages of a compensated compass over an uncompensated compass is this, that a compass which is not compensated properly and has large errors would behave very erratically on changing course and ought never to [2606] be relied on as to how much the course had actually been changed, whereas with all the errors reduced to the lowest possible minimum good results would be obtained all around. Isn't that true?

A. Yes, sir.

Mr. Bogle: I object to that as not being proper cross-examination. None of this was gone into on direct.

The Court: What about that?

Mr. Ryan: Why, he was called to testify as to the necessity and practice of compass adjustments.

Mr. Bogle: That is right; the practice.

(Testimony of G. Edwin Thompson.)

Mr. Ryan: I do not know of any more relevant examination in my life.

The Court: Of course, at this stage of the proceeding it is not for the Court to determine the weight of it, except that I would like counsel to know that I do not see how it is going to help me decide this case, to have this man state his entire learning on this subject to compass adjustments. I would like very much to hear what this witness says on cross, as well as on direct, relating to the particular phases of this deviation that the claimants insist may have had something to do with this accident. I would be very much enlightened to hear on cross, as well as on direct, anything touching on that, but as far as having this witness testify as to the whole theory and scientific analysis of compass adjustment, it does not seem to me to be very pertinent to the matter. You may proceed.

Mr. Ryan: Well, in view of Your Honor's statement [2607] I will abbreviate it on the other matter and bring it in line with what Your Honor suggests.

Q. (By Mr. Ryan) If the difference in the deviations noted between the steering and standard compasses was different in 1935 from that shown on the cards in 1933—from that shown on the deviation cards in 1933, would not that indicate a change of some sort in the compasses?

A. Yes, sir.

Q. And assuming that there is no current, if a ship continually makes good a course to one side

(Testimony of G. Edwin Thompson.)

of the course set by compass, is not compass deviation indicated?

Mr. Long: I object to that as improper cross-examination, Your Honor.

The Court: Objection overruled.

A. Not necessarily.

Q. (By Mr. Ryan) Well, what else could possibly be indicated under those circumstances?

A. Will you read the other question again, exactly?

The Court: Read that other question.

(Question read as follows:

“And assuming that there is no current, if a ship continually makes good a course to one side of the course set by compass, is not a compass deviation indicated?”)

A. I would say not.

The Court: At this time we will take a five minute recess.

(Recess)

The Court: You may proceed. [2608]

Q. (By Mr. Ryan) Does not good and safe practice require that if you want to ascertain what the deviations are of a compass, or to examine a compass properly, the cargo booms should be secured for sea, and the other gear around of an iron or steel nature should be secured for sea?

A. On some boats they run with the booms up all the time, and they like to have the compasses

(Testimony of G. Edwin Thompson.)

adjusted in that position. Others have them down in the rest position which is—the booms—these wooden booms on these boats have no effect on these compasses.

Q. You say that they would have no effect on the compasses?

A. No, they would not.

Q. Isn't there at the end of each one of the booms as Mr.—assuming Mr. Erlands testified yesterday that at the end of each one of these booms there is an iron band, together with a gin block, doesn't that affect the compasses?

A. They are never close enough to the compasses to affect the standard compass.

Q. So it makes no difference in your opinion whether the booms are up or down, so far as the compasses are concerned, is that right?

A. That does not affect the standard compass at all.

Q. Not a particle?

A. No.

Q. Not even worth mentioning?

A. No.

Q. Now, isn't it a fact that whenever the booms were down and there was an adjustment of compasses made, you always [2609] made a record of it?

A. Not always.

Q. Isn't that shown in your book time and time again?

A. In some cases.

(Testimony of G. Edwin Thompson.)

Q. And it is not there with reference to the "Denali", is it?

A. No.

Q. Now, if the booms were down on the "Denali", you would have made a note of that, as affecting your examination, wouldn't you?

A. No.

Q. Well, you did in the other cases, didn't you?

A. In the case of some, but not all.

Q. Well, I just happened to glance at a few pages. Look at page 3481, the "Redondo". What is your note there about booms?

A. That is not——

Q. (Interposing) Page 3481; what is your note there about booms?

A. That is not my note.

Q. Whose note is it?

A. My partner's.

Q. Mr. Kauffman's?

A. Yes, sir.

Q. And he is senior to you in that firm, is he?

A. No.

Q. Well, how long has he been doing that work, doing compass adjusting?

A. We started in business together.

Q. Anyway what is the note there about the booms? [2610]

A. "No. 2 booms down".

Q. No. 2 booms down?

A. Yes, sir.

(Testimony of G. Edwin Thompson.)

Q. Look at 3573, the "Dellwood"; what is the reference there about booms?

A. "No. 2 booms down."

Q. On page 3590, the "Tanana", what is there with reference to booms—is that his or yours?

A. That is his. 3590?

Q. Yes.

A. "No. 2 and 3 booms down".

Q. What is the point of making those notations if they have nothing to do with compass adjustments?

A. You have picked out three over one hundred ships here that have it marked.

Q. But what is the point of having the record of that?

A. Very often if it would make a bad condition, why, they would make a note of it. If there is no bad condition, why, then, we make no note of it.

Q. I see. Now, one of the forward booms of the "Denali" was made of steel, wasn't it?

A. I don't know.

Q. Well, if it was, then it would make a very important difference, wouldn't it?

A. Not necessarily.

Q. Well, in all probability, wouldn't it?

A. You see when the forward booms—there are probably four booms there or more——

Q. (Interposing) If there was a forward boom that was made of steel, it would make a lot of difference—— [2611]

(Testimony of G. Edwin Thompson.)

A. (Interposing) No.

Q. Do you mean to say that swinging an iron boom in front of the compass does not affect it?

A. If it is over the No. 1 hold it would not.

Q. But you don't know where it was?

A. That is what I said.

Q. All right.

A. I said that I didn't know there was one.

Q. Now, isn't Lecky a standard treatise on compasses?

A. No.

Q. He is not?

A. No, but he is on seamanship.

Q. I see. What is a standard authority on compass adjustment.

A. I don't recall the names of any right offhand now, but there are several.

Q. By "Lecky", I mean Captain Lecky, L-e-c-k-y, and I refer to his book, "Wrinkles in Practical Navigation and Compass Adjustment". You understand that, don't you?

Mr. Bogle: I object to that as improper cross-examination.

The Court: Objection sustained.

Q. (By Mr. Ryan) Now, suppose the azimuth mirror has not been used for a long time and has been taken out—kept around the chart room and around—isn't it likely that that azimuth mirror, when it is put back would have an error?

(Testimony of G. Edwin Thompson.)

A. They are not very delicate instruments. They will stand a lot of handling.

Q. Yes, but they have errors, don't they? [2612]

A. They can have errors, yes, sir.

Q. You have often seen azimuth mirrors that have errors, haven't you?

A. Sure.

Q. And you have allowed for the error?

A. No.

Q. You have never allowed for it?

A. No; we repair them.

Q. You repair them?

A. Yes, sir.

Q. So that you do not have to allow for them?

A. No.

Q. But you would not use an azimuth mirror until you had ascertained what the error was, if any, would you?

A. No, we don't.

Q. Now, doesn't the fact that the smokestack of a ship is heated or not influence the compass?

A. Not as far away as it would be on this ship.

Q. How far away was the nearest part of the stack of the "Denali" to her standard compass, if you know?

A. I don't know. I would have to guess.

Q. Well, then, how do you know that it is that far away?

A. Well, I know from experience.

(Testimony of G. Edwin Thompson.)

Q. You have been on ships that have had heated stacks, and you know what their influence is on their compasses at sea, don't you?

A. Yes, sir.

Q. On what ships have you served on?

Mr. Bogle: I object to this as improper cross-examination. [2613]

Q. (By Mr. Ryan) I thought you said on direct that you hadn't served at all on any ship at sea.

The Court: I am going to let that stand as testing his knowledge.

Mr. Bogle: I see.

The Court: But it is not going to help me to decide the case, I do not think, but if Mr. Ryan wants to clutter up the record with that sort of thing and consume time in doing so, he will have the right to do so and I will not exclude him from doing it.

Mr. Ryan: In my brief, if the Court please, I show to Your Honor the importance of some of the matters that this man has testified to this morning, and if Your Honor wants to hear argument on it I will——

The Court: (Interposing) I do not. You are simply taking up a lot of time for nothing, in my opinion.

Q. (By Mr. Ryan) Isn't it a fact that the force and the amount of change and the duration of retained magnetism in a ship are uncertain?

A. Yes.

(Testimony of G. Edwin Thompson.)

Q. And retained magnetism is that magnetism which is induced into the ship by the magnetic influence of the earth when she has been lying with her head in one direction for a considerable time, isn't that so?

A. That is one name for it, yes.

Q. And one of the first noticeable results of retained magnetism acquired by a ship from lying up on one heading for a long time is that the alteration of the [2614] course by compass will have to be larger than the alteration which it is desired to make good?

A. Yes, but it is very temporary.

Q. Well, you don't know how temporary it is, do you, under the conditions of this case?

A. Only very temporary.

Q. Yes. Well, if the ship pursues her courses on the voyage on the same heading that she was on—well, I think we have covered that. I will strike that. Isn't it a fact that a compass—that a ship which has retained magnetism will tend to cause the compass of the ship to be over-sensitive on some courses and too sluggish on others, and that on the other hand a compass carefully compensated will behave equally well on all courses?

Mr. Bogle: I would like to have him, Your Honor, refer to the page and volume that he is reading from.

Mr. Ryan: I am asking him a plain question.

The Court: Read the question.

(Testimony of G. Edwin Thompson.)

(Question read as follows:

“Isn’t it a fact that a ship which has retained magnetism will tend to cause the compass of the ship to be over-sensitive on some courses and too sluggish on others, and that on the other hand a compass carefully compensated will behave equally well on all courses?”)

The Court: Objection overruled.

A. I would say very minutely.

Mr. Bogle: What was the answer?

The Witness: I would say very minutely.

Q. (By Mr. Ryan) Have you ever measured it under the [2615] conditions that obtained in this case?

A. I did not measure it in this case, no.

Q. You haven’t any idea what the amount is in this case, do you?

A. In this particular case?

Q. Yes.

A. No, but I have some idea, yes.

Q. You don’t know what courses the vessel followed, even?

A. Yes, I know what courses the vessel followed.

Q. You don’t know all the courses the vessel followed, do you?

A. Yes, sir. I have heard you say where she had been. I heard you read or I heard read the different courses that she was put on after she left the shipyard.

(Testimony of G. Edwin Thompson.)

Q. Now, what was the condition of the compasses of the "Denali" which required adjustment in July, 1933, when you adjusted them?

A. You mean how much deviation did they have?

Q. What was the trouble with them? Why did you have to adjust them at that time?

A. They had a small error.

Q. Have you a record of that?

A. No.

Q. As to what that error was?

A. No.

Q. Do you know what the deviations were——

A. (Interposing) No.

Q. (Continuing) ——and what the defects were in the compasses at that time?

A. There were no defects. [2616]

Q. Have you any record of it at all?

A. Yes.

Q. What record?

A. Well, the compasses were not repaired. We examined them carefully before we went out, and there were no repairs made, so the compasses were not repaired.

Q. Have you any deviation cards of the compasses of the "Denali" just preceding your adjustment of them in July, 1933?

A. No.

Q. You don't know what they show?

A. They would not——

(Testimony of G. Edwin Thompson.)

Q. (Interposing) I do not ask you to guess, if you don't know. Do you know. Can you tell me what——

A. (Interposing) The cards would not show the deviations just before she was adjusted.

Q. Well, then, why did you adjust the compasses at that time? What was the reason for doing it?

A. Because they had acquired some error.

Q. Yes, but what was the error?

A. I don't know what the amount was.

The Court: Mr. Ryan, if you wish to——

Mr. Ryan: (Interposing) If the Court please, I have not had a chance to examine this thing here——this book that he has produced. I ask that he be held here subject to further cross-examination until I have an opportunity to do that.

The Court: As I started to suggest, Mr. Ryan—I think it is covered, but if you wish that to be done, it will be done, but the Court would like to have the [2617] benefit of any information that this witness may have of any condition or circumstance which—if any—which he has not testified to; that has any bearing on this question whether or not these compasses on the “Denali” on this voyage were in any way out of order and unreliable, if he has any information on that.

Mr. Ryan: He has not seen them, Your Honor. This man was not called in. That is the trouble, or one of the troubles.

(Testimony of G. Edwin Thompson.)

The Court: I think that he said just now that he had two years before made some investigation of the "Denali's" compasses, did he not?

Mr. Ryan: In July, 1933?

The Court: Yes.

Mr. Ryan: Yes.

The Court: Do you know, by reason of that examination, or of anything that happened after that, or before that, which leads you to think or to suspect the "Denali's" compasses were unreliable and out of order and not suitable for use in navigating on this voyage?

The Witness: No. The compasses were very well situated on the boat, and while we didn't test them before she left, we had every reason to believe that they were mechanically in good repair.

Mr. Ryan: There is one more question I want to ask.

The Court: Proceed.

Q. (By Mr. Ryan) You haven't seen the compasses since July, 1933, have you?

A. I would not say that I hadn't seen them, but I have not tested them. [2618]

Q. That is it. Now, isn't it a fact that the Northland Transportation Company has the compasses of its vessels adjusted every spring when the vessels are sent out on their seasonable trips?

A. No.

Mr. Long: What is your answer?

A. No.

(Testimony of G. Edwin Thompson.)

Q. (By Mr. Ryan) Do you do all the adjusting for the Northland Transportation Company?

A. We do.

Q. Have you examined your records to ascertain how often the Northland Transportation Company adjusts the compasses of its vessels?

A. I have not examined them, no, but I know, and I have in mind very accurately about how often we do that on all of these ships.

Q. All right. Can you name any vessel of the Northland Transportation Company that went out this year that did not have her compasses adjusted?

A. This year or this spring?

Q. This spring.

A. Yes.

Q. All right. Name one.

A. The "North Haven".

Q. The "North Haven"?

A. Yes, sir.

Q. Can you name any other one?

A. I don't believe the "North Wind" was on its first trip.

Q. Can you name any other vessels of that company—

A. (Interposing) The "North Wind". [2619]

Q. (Continuing) —that has not had her compasses adjusted within the last ten years at the beginning of the spring season going up to Alaska?

A. Yes.

Q. If she has been laid up?

(Testimony of G. Edwin Thompson.)

A. Yes.

Q. Give me the name if you can, and the date.

A. They do not have that done periodically.

Q. Can you give me the name and the date, please?

The Court: If you think of any others, you might say so, and if you do not, do not hesitate to say so.

A. I do not recall just the dates when that was done.

Q. (By Mr. Ryan) Not having adjusted the "Denali's" compasses since 1933, could you of your own knowledge know their condition as of May, 1935?

A. You mean the amount of deviation that they had, or whether they were in need of repair?

Q. Everything about them. Could you know their condition as of May, 1935, without having looked at them for two years? [2620]

Mr. Ryan: That is all, Your Honor.

Mr. Bogle: Do I understand, Your Honor, that counsel is requesting that this witness be held for further cross-examination on other points?

The Court: That is my understanding.

Mr. Bogle: I would rather that counsel finish his cross-examination, so that I can finish my re-direct examination. I do not see any reason why he shouldn't do it now.

Mr. Ryan: I am only asking for it in reference to this exhibit.

(Testimony of G. Edwin Thompson.)

The Court: Well, you may look at it.

Mr. Ryan: I cannot examine it now. Your Honor can see that I couldn't possibly examine it right now.

Mr. Bogle: He has had a copy for two weeks.

Mr. Long: We gave him a copy of the book two weeks ago.

Mr. Ryan: I beg your pardon—you gave us a copy of the book?

Mr. Long: I certainly gave you a copy with reference to the "Denali" two weeks ago.

Mr. Ryan: Well, I do not want to have any argument. I respectfully ask for a reasonable opportunity to examine the entries in this book. They are of a technical nature, and I will have to give a little time to it.

The Court: (Addressing the witness) Have you got an appointment at 2:00 o'clock this afternoon, a definite appointment?

The Witness: No, sir; I have not.

The Court: Would you be greatly inconvenienced in [2621] your business if you were to come back here at 2:00 o'clock?

The Witness: I can be back.

The Court: Very well. Mr. Ryan, you be prepared to finish this cross-examination at that time. Mr. Bogle, unless there is some serious objection could you continue your redirect at this time?

Mr. Bogle: I can go ahead. Proceed with my redirect.

(Testimony of G. Edwin Thompson.)

The Court: Very well.

Mr. Bogle: If it is limited exclusively to that book, I would be perfectly willing to go ahead.

The Court: It will have to be so limited. You will have to finish the other cross-examination now.

Redirect Examination

By Mr. Bogle:

Q. Mr. Thompson, when you completed your compensation of this compass on July 21, 1933, made up the card, what was the greatest deviation or greatest error shown on any one heading?

A. Two degrees.

Q. What heading was that on?

A. North Northeast.

Q. In making up your compensation card, on how many headings do you give the deviation, how many points?

A. 16.

Q. When you finished with that compass was it an adjusted or unadjusted compass?

Mr. Summers: Just a minute, please; it seems to me [2622] that is immaterial in view of the lapse of time between that time and the sailing of the "Denali" on this voyage?

The Court: The objection is overruled.

The Witness: I would say it was an adjusted, compensated compass.

Q. July 21, 1933?

A. Yes, sir.

(Testimony of G. Edwin Thompson.)

Q. Mr. Thompson, does this matter of retained magnetism depend upon the length of time or the heading the vessel is laid up on?

A. Somewhat.

Q. Assuming that the vessel was laid up on October 31, 1934, and that on March 26, 1935 she was moved from the West Seattle yard, and under her own power proceeded to the General Petroleum plant on Harbor Island, and there took on a full cargo of fuel oil, and returned under her own power to the West Seattle yard; and that on April 4, under her own power, she proceeded to Todd Dry Docks, went into the drydock, heading—do you know the heading of that dock?

A. Yes, sir.

Q. Was she heading in the dock?

A. Yes.

Q. Stayed in the dock for 24 hours, and then backed out of the dock under her own power and returned to the West Seattle yard; in your experience of 20 years, would you assume that she had any retained magnetism?

Mr. Summers: Just a minute, Mr. Thompson, before you answer. This is not redirect, Your Honor.

Mr. Bogle: This whole subject of retained magnetism [2623] was brought out on cross-examination.

The Court: Yes. The objection is overruled.

Mr. Ryan: If the Court please, do you wish any argument on that?

(Testimony of G. Edwin Thompson.)

The Court: No. The ruling will stand. You went into this subject of retained magnetism.

The Witness: I would say it would have a tendency to practically eliminate any retained magnetism.

Q. (By Mr. Bogle) Assuming that after the vessel left the yard on May 13, 1935, she proceeded to the Arden Salt Dock, under her own power, and from the Arden Salt Dock to Pier 40, under her own power, and then from Pier 40 to the American Can Company, under her own power, and from the American Can Company to the Pacific Coast Coal bunkers, and at the Pacific Coast Coal bunkers she reversed approximately twenty times in order to get stern first into the coal bunkers, and that then she went from there, under her own power, to the General Petroleum Company, and from the General Petroleum Company back to Pier 2, under her own power, all of this covering a period from May 13th, some six or seven o'clock in the morning, until noon of May 15th, would you say that at the conclusion of those maneuvers she would or would not have any retained magnetism?

A. I would call that a very good shake-down trip, and that she would have practically none.

Q. Mr. Ryan in his question, as I understood it, spoke of two types of retained magnetism; one acquired from lying on a heading, and one acquired from running on a certain route for a certain length of time. Is there a tendency [2624] of a vessel to

(Testimony of G. Edwin Thompson.)

acquire this magnetism, sometimes called retained and sometimes called temporary magnetism, after she navigates on the same heading for a considerable time?

Mr. Ryan: That is objected to as leading. This is his own witness, an expert witness.

Mr. Bogle: This was all brought out on cross-examination.

Mr. Ryan: That does not give you any right to use leading questions.

The Court: The objection is that the question is leading.

Mr. Bogle: I will put it this way:

Q. (By Mr. Bogle) First, as to the retained magnetism, the possibility of acquiring it alongside the dock; is there any possible way of one determining definitely whether a vessel does or does not acquire that retained magnetism, except by taking bearings?

A. That is the only way.

Q. Under what circumstances may a vessel retain temporary magnetism after she leaves her dock?

A. By running on an East or West course for a period of time.

Q. How long?

A. It would have to be several days.

Q. On the same heading?

A. On the same heading.

Q. How about running on a North course?

(Testimony of G. Edwin Thompson.)

A. Not nearly so effective.

Q. Do you do all the adjusting for the Northland Transporta- [2625] tion Company?

A. I think so.

Q. Do you know whether or not, of your own knowledge, they have any regular period for adjusting compasses?

A. I am sure they do not.

Q. Mr. Thompson, assuming that you had been called in to swing this ship before she left Seattle, before she loaded, and you had found no deviations in excess of the two degrees on any heading, would you have made any compensation of her magnets?

A. Oh, yes; we would.

Q. To what degree would you attempt to get it, the minimum?

A. Reduce it to a minimum?

Q. Of how much?

A. As close as you could work, half a degree.

Q. In 1933 were you able to do that with this ship?

A. There was one heading where it bulged out to two degrees.

Q. And that was the closest you could get her?

A. It is a heading you have no corrector for.

Q. Assuming that you had adjusted the ship, swung her, and, if necessary, made some compensation, if there had been any retained magnetism at the time you made the adjustment what would happen thereafter?

(Testimony of G. Edwin Thompson.)

Mr. Ryan: That is objected to on the ground that it calls for speculation.

Mr. Bogle: I think that all of this does. All of this cross-examination was in regard to speculation as to what might happen.

The Court: Yes. The objection is overruled.

The Witness: As it would lose that retained [2626] magnetism, then the compass would have a tendency to assume an error.

The Court: To do what?

The Witness: To assume an error.

Mr. Bogle: As she lost her temporary magnetism?

Mr. Ryan: Just a minute; do not lead the witness. I would like to have the last answer read.

The Witness: If the compass was made correct on a heading, and then if it lost the magnetism, then it would gradually obtain an error.

The Court: Did you say "obtain" or "attain"?

The Witness: Take on an error.

The Court: You mean a constant error?

The Witness: Increasing with the decrease of the retained magnetism.

Q. (By Mr. Bogle) You made reference to when she lost that magnetism; what magnetism do you refer to?

A. The retained magnetism, the magnetism it took on while laid on one heading.

Q. Then under such circumstances would your adjustment and check of the compass, and the devia-

(Testimony of G. Edwin Thompson.)

tion card that you made up, be correct—would it be a correct deviation card after she lost this temporary magnetism?

A. No. The card is just at that time.

Q. So it would be erroneous, wouldn't it?

A. Yes, sir.

Q. In shaking a vessel down, to shake out any possible retained magnetism, or temporary magnetism, to what extent would you shake her down? What do you mean by that? [2627]

A. Put her on an opposite heading to what she was laid up, and then by backing the ship there is lots of vibration that rattles the ship and shakes it down. If the boat is lying still on a heading it is not so apt to take deviation as it is if it is being jarred. So that if you put the ship around in an opposite heading and then shake it up good it has a tendency to lose any magnetism that it retained much quicker.

Q. Well, Mr. Thompson, would the shaking down that you referred to before a compass adjuster would compensate these compasses be as extensive or more extensive than the maneuvers this ship actually made, which I have referred to in my previous question?

A. I would say they would be less.

Mr. Ryan: That is objected to on the ground that the question is too indefinite, and not based on facts stated in the record, or established in the record.

(Testimony of G. Edwin Thompson.)

The Court: The objection is overruled.

Mr. Long: What was your answer?

The Witness: I would say they would be less.

Q. (By Mr. Bogle) Mr. Thompson, some reference was made on cross-examination to shake-down cruises to Alaska. Do you know of any such practice?

A. I never heard of one.

Q. Did you ever hear of a practice in the Alaska Steamship Company of shake-down cruises to Alaska?

A. No, sir.

Q. In connection with compasses?

A. No.

Mr. Bogle: I think that is all. [2628]

Recross Examination

By Mr. Ryan:

Q. You do not mean to say that you would undertake to draw up deviation cards for a ship that had retained magnetism in it, do you, if the deviation cards would not be any good after you drew them up?

A. Yes.

Q. You would do that, anyway?

A. We would do it and caution them about it. Caution the captain that it was the best we could do under the circumstances.

Q. You would not refuse to do the work, you would not refuse to draw up the deviation cards,

(Testimony of G. Edwin Thompson.)

simply because you knew the ship had so much retained magnetism that your deviation card would not be of any real good after, say, a couple of weeks, is that so?

A. We wouldn't adjust the compass on a boat if we thought the retained magnetism was very large. If it was a small matter then we would give it as much of a shakedown as we could and compensate the compass, and caution them to watch for it.

Mr. Ryan: That is all, excepting this other matter.

The Court: Yes. You can be excused until 2:00 o'clock, and come back at that time, will you?

Mr. Ryan: I may say that I may not need him at that time.

The Court: If you receive word from Mr. Ryan that he doesn't want you to come back, you may accept that as authority from the Court to stay away.

(Witness excused.) [2629]

SYLVESTER GLASS,

called as a witness on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. Bogle:

Q. Will you state your name?

A. Sylvester Glass.

Q. Where do you live?

(Testimony of Sylvester Glass.)

A. Seattle, Washington.

Q. What is your business?

A. Master mariner.

Q. How long have you been a seafaring man, Captain?

A. I first went to sea in November, 1899.

Q. What licenses do you hold?

A. Master, unlimited, all oceans, and pilot from San Diego to Kodiak Island.

Q. How long have you held a master's license?

A. Since 1908.

Q. How long have you held a pilot's license?

A. An Alaska pilot's license, I got that about 16 years ago, but a pilot's license since 1908.

Q. Captain, what experience have you had in Alaska waters?

A. I first started running to Alaska in 1910.

Q. How regularly have you sailed to Alaska since then?

A. From the beginning I was running up there continuously up until about 1932. Of course I want to explain this, that in the winter time, during the off season, for the company that I worked for I was on the Southern run, and every summer I would go back on the Alaska run, every year. [2630]

Q. What companies have you worked for in the Alaska trade, Captain?

A. The Pacific Steam, Northland Transportation, and I have also done considerable piloting for

(Testimony of Sylvester Glass.)

the Standard Oil Company and other independent companies.

Q. Have you done any piloting for the Navy?

A. Yes, sir.

Q. In Alaska waters?

A. Yes, sir.

Q. What has been the extent of your experience in the waters around Dixon's Entrance, Hecate Strait, and Caamano Passage?

A. Well, for two seasons I was continuously on the West Coast run, that is, running the West Coast of Prince of Wales Island, and I used to use Caamano Passage continuously during that time.

Q. About how many trips would you make through there is a *station*, through Caamano Passage?

A. About 34.

Q. Each season?

A. Yes, sir.

Q. Capt. Glass, have you, as the result of your experience in navigating these waters, any personal knowledge as to the regularity of tidal currents, the force and direction, the time of the commencement of the slack, and the time of the commencement of the flood, particularly in the area from Triple Island up to the entrance of Caamano Passage?

A. You mean absolute knowledge?

Q. No. What has been your personal knowledge after making [2631] 34 trips a year through there?

(Testimony of Sylvester Glass.)

Mr. Summers: Just a minute. If Your Honor please, I object to this for two reasons. First, the answers to the interrogatories to the Petitioner said that on the voyage in question the tidal currents were known and to be expected. In other words, that they were, in effect, usual, and if this witness is testifying only as to known or usual or expected conditions it is immaterial. If he is undertaking to contradict the interrogatories, then the Petitioner is bound by those answer. If so, that would be an attempt to depart from the allegations of the petition here to the effect that the cause of this stranding is unknown to the Petitioner, and if it was unknown in September when the Petitioner filed its petition, after investigation——

The Court: The objection is overruled. He may answer.

Mr. Ryan: May I ask Your Honor at this time to require Petitioner's counsel to state their position on the record, with reference to whether the cause of this disaster is unknown to them, or whether it is known to them, and if they are now trying to disclose their knowledge, or what their position is. On the pleadings as they stand the petitioner, in the petition sworn to by the officers of the Petitioner, alleges that the cause of the stranding is unknown, and that she stranded on this reef, and that she got off her course, or got off the course. In the answers to the interrogatories, as Mr. Summers just pointed out, they stated that the conditions she encountered, weather and sea, were such as were

(Testimony of Sylvester Glass.)

[2632] reasonably to be expected at that time of the year, at the season, in that place. They answered yes in answer to that.

So, as I see it, the Petitioner is now precluded by its own pleadings from coming in here and trying to rely on some known cause that they know about, which they have concealed all this time in their pleadings, and throughout the case.

If they are trying to show that the ship encountered a peril of the sea in the shape of a reasonably unforeseeable sea condition, they were required to state that at the proper time and in this case.

The pleadings have been gone through before Your Honor and before Judge Neterer, time and again.

Now, if they are going outside that now, and are trying to inject peril of the sea as a defense in their limitation suit, I respectfully urge to Your Honor that they are precluded from doing that by their own pleadings.

They swear that they do not know the cause, and that pleading was dated three months after the investigation of the Steamboat Inspectors, after the facts were known, and after Mr. Murphy admits he got reports about this thing from the pilot.

Now, this is a very serious point, as I see it. Counsel is asking this man, apparently, about his experience there, about currents, and that sort of thing, and that is outside the issues in the case, as I see it. They have not pleaded peril of the sea in their petition.

(Testimony of Sylvester Glass.)

The Court: The objection is overruled. Exception [2633] allowed.

Mr. Ryan: May I have a continuing objection on that ground, and on the grounds stated by Mr. Summers, and an exception to the adverse ruling of the Court on this whole line of examination of this witness, and other witnesses on that point.

The Court: I would say that you had better repeat your objection, at least in connection with separate witnesses.

Mr. Ryan: Very well, but as to this witness.

The Court: As to this witness you may, as far as the Court is concerned. Read the last question.

“Q. Capt. Glass, have you, as the result of your experience in navigating these waters, any personal knowledge as to the regularity of tidal currents, the force and direction, the time of the commencement of the slack, and the time of the commencement of the flood, particularly in the area of Triple Island up to the entrance of Caamano Passage?

A. You mean absolute knowledge?

Q. No. What has been your personal knowledge after making 34 trips a year through there?”)

The Witness: I could not very well answer about the time, but I could answer definitely that the set of the current always sets from a point about off Prince Lebo Island, up through Caamano Passage,

(Testimony of Sylvester Glass.)

invariably, every trip that I have made there, set on Zayas Island, towards the westward.

Q. Captain, I show you Petitioner's Exhibit No. 33, chart [2634] No. 2828. I wish you would take a blue pencil and indicate on that chart the knowledge gained from your own personal observations as to the set of the tide; first, in the position just southerly of Zayas Island, on an ebb tide.

Mr. Ryan: May I object further on this ground, that the witness has not yet testified that he has made any observations or accurate determinations, and has not specified any one which would tend to show that the United States Government, the British Admiralty, and the Canadian Government were wrong in issuing the instructions which they have issued on that chart No. 2828, and on British Admiralty Chart No. 1737, with reference to tidal currents, at every hour of the day throughout the 24 hours, and with reference to the tidal current arrows thereon.

Mr. Bogle: I might state, Your Honor, because counsel has repeated that argument——

Mr. Ryan: (Continuing) And this is an attempt, apparently, to impeach the United States Government charts, and the Canadian Government and British Admiralty charts, and the man has not been shown sufficiently qualified by experience or observation, or experiment, such as to give any weight whatever to his testimony tending to contradict the years of experience, and observations, with accurate scientific instruments, which are condensed

(Testimony of Sylvester Glass.)

and described on the United States Government charts, and particularly Chart No. 2828.

Mr. Bogle: If Your Honor please, that statement has been made about twenty times— [2635]

Mr. Ryan: (Interposing) I ask that it be added to my grounds of objection to the whole line of examination of this witness.

Mr. Bogle: I merely want to point out in argument on that matter that there isn't a syllable of testimony in this case as to what this chart is based on. There isn't one particle of evidence that there has been any survey made, not a particle of evidence that the United States Government has any knowledge whatsoever about it, and we expect to show that it is merely a copy of a Canadian chart. There has been no U. S. surveys in this vicinity at all.

Mr. Summers: To the extent that the objection has been made, I want to supplement it; it is not shown that on any voyage Capt. Glass has made in these waters that the conditions were similar to those on the voyage in question, and there is no comparable basis for an opinion.

The Court: The objection is overruled. Read the question. (Question read as follows:

“Q. Captain, I show you Petitioner's Exhibit No. 33, chart No. 2828. I wish you would take a blue pencil and indicate on that chart the knowledge gained from your own personal observations as to the set of the tide; first, in the position just southerly of Zayas Island, on an ebb tide.”)

(Testimony of Sylvester Glass.)

If you know that, Captain. There is always one condition in these questions, and that is if you know.

The Witness: I know it by actual observation, the set of my ship. (Witness makes certain designation [2636] on exhibit.)

Q. (By Mr. Bogle) The arrows in blue, made with the blue pencil, on Petitioner's Exhibit No. 33, have been drawn by you in answer to that question?

A. Yes, sir.

The Court: At this time we will take the noon recess until 2:00 o'clock.

(Whereupon a recess was taken until 2:00 o'clock P. M., November 12, 1937. [2637])

November 12, 1937,
2:00 o'clock P.M.

Court convened pursuant to adjournment;
All parties present.

The Court: Mr. Thompson was asked to come back in case there might be any further cross-examination. Is it agreeable to take up that matter with him now, Mr. Ryan?

Mr. Ryan: Yes, Your Honor.

The Court: Come back to the stand, Mr. Thompson. Mr. Thompson is recalled for the purpose of further cross-examination as previously indicated.

G. EDWIN THOMPSON,

resumed the stand for further examination.

Further Cross-Examination

By Mr. Ryan:

Q. I show you this book—your memorandum book, Petitioner's Exhibit 64, and I will ask you to state what difference you found between the deviations on the standard compass and the steering compass of the "Denali" on July 21, 1933, when you adjusted her compasses on the heading West Southwest.

A. They were the same.

Q. That is, the deviation was zero, was it not?

A. Zero on both of them.

Q. On West Southwest?

A. That is right.

Q. That is what you found after you had completed your [2638] adjustments, isn't that so?

A. Yes, sir.

Q. I mean as you corrected it that was what was left—nothing—on West Southwest—no difference between the standard compass and the steering compass on that heading of West Southwest?

A. We would correct them first, and then we would swing her for residual deviation.

Q. Now, when you made your adjustment in July, 1933, on the compasses of the "Denali", what difference did you find between the standard and steering compasses on the heading West?

(Testimony of G. Edwin Thompson.)

A. There was half a degree difference between then.

Q. In what direction?

A. The standard compass had a half degree easterly deviation when the steering compass was magnetic.

Q. Now, when you adjusted the compasses of the "Denali" on July, 1933, what differences did you find between the deviation on the standard and steering compasses on the heading West Northwest?

A. They were both zero.

Q. When you adjusted the compasses of the "Denali" in July, 1933, what differences did you find between the deviations on the standard and steering compasses on the heading Northwest?

A. The standard was half a degree westerly and the steering was half a degree easterly. There would be one degree difference.

Q. In what direction would that difference be?

A. It would be added. The difference would be one degree. [2639]

Q. One degree westerly or easterly?

A. Neither. One is one-half degree one way and the other is one-half degree the other way.

Q. Well, which is to the right of the other?

A. The——

Q. (Interposing) You don't know whether that is one degree westerly, or one degree easterly—the difference between the two, is that it?

(Testimony of G. Edwin Thompson.)

A. I don't know how you could—I say each of them is half a degree. One is one way—one is half a degree one way from zero and the other is half a degree the other way from zero.

Q. There is one degree difference between the two of them?

A. That is right.

Q. Now, what deviation did you find between the standard and steering compasses on the "Denali" in July, 1933, on the heading North Northwest?

A. The standard was one degree westerly and the steering was one degree easterly.

Q. Yes. Now, I show you the deck log book of the "Denali" on this voyage, Claimants' Exhibit A-4, and I call your attention to the entry, May 16, 1935, and ask you to tell me what differences, if any, that log book shows between the deviations on the standard and steering compasses—

Mr. Bogle: What was the time?

(Question read)

Q. (By Mr. Ryan) Take the standard compass reading as entered there as West $\frac{3}{8}$ South.

A. I do not see it.

Q. I mean this compass reading (indicating). That should [2640] be West $\frac{3}{8}$ North.

A. There was one-eighth of a point difference—no—three-eighths of a point difference.

Q. Three-eighths of a point difference, isn't there?

(Testimony of G. Edwin Thompson.)

A. Yes, sir.

Q. In what direction?

A. I don't know that you could say. You cannot say in which direction there. They are that much apart. Unless you know which one was right you could not say which direction either one was off.

Q. You cannot say whether both had changed or whether just one had changed, can you?

A. No, you cannot tell.

Q. But the difference between the two was three-eighths of a point?

A. Yes, sir.

Q. All right. Now, on the same date, note the entry there of the standard compass—that is, the bridge compass Northwest by West, and tell me what difference was recorded there as of May 16, 1935, between the deviations on the standard and steering compasses on the "Denali".

A. One-quarter of a point.

Q. In which direction?

A. I cannot tell that either.

Q. How many degrees is that?

A. A quarter of a point?

Q. Yes.

A. Approximately two and a half degrees.

Q. All right. Now, on that same date, May 16, 1935, what differences are recorded in that deck log book of the [2641] "Denali" on the standard compass heading Northwest by West $\frac{3}{4}$ West?

A. There is a quarter of a point difference there.

(Testimony of G. Edwin Thompson.)

Q. Can you tell me what direction it is in?

A. No.

Q. What kind of a deviation that is, can you tell me that?

A. No, of course.

Q. All right. On that same date, May 16, 1935, what differences do you find recorded in that log book between the deviations on the standard and steering compasses, taking, for instance, the entry recording bridge compass or standard compass heading West $\frac{7}{8}$ South?

Mr. Bogle: Just a minute. I want to object to this as not being within the Court's order that he examine this witness further with reference to—

The Court: (Interposing) It may not be, Mr. Bogle, but I want to say that the Court is very much interested in the specific condition of this or these specific compasses.

Mr. Bogle: Yes.

The Court: Before or at the time of the stranding—within any reasonable time before the stranding, and so I will let him answer.

A. I don't find that course.

Q. You find it now, don't you (indicating)?

A. Yes.

Q. Now what do you say?

A. There is one-eighth of a point difference.

Q. In what direction?

A. I cannot tell. [2642]

(Testimony of G. Edwin Thompson.)

Q. On that same date, May 16, 1935, what differences do you find recorded there between the deviations on the standard and steering compasses of the "Denali" on, say, standard compass course West $\frac{5}{8}$ North?

A. A quarter of a point difference there.

Q. Can you tell in what direction?

A. No.

Q. Now, on May 17, 1935, in the deck log book of the "Denali" what differences do you find recorded there between the deviations on the standard and the steering compass on a heading by standard compass of West by North $\frac{5}{8}$ North?

A. Three-eighths of a point.

Q. In what direction?

A. I cannot tell you.

Q. Now, have you made an entry of those differences that you have just found in the note book?

A. No, I did not.

Q. Will you make a note of them now as the reporter just reads back your answer.

(The deviations on the various headings between the standard and steering compasses as of May 16 and May 17, 1935, were read to the witness.)

Q. (By Mr. Ryan) There is one more. Now, on May 16, 1935, what differences did you find recorded in the deck log book of the "Denali" between the deviations on the standard compass and the steering compass on the heading, by standard compass, West $\frac{3}{8}$ South?

(Testimony of G. Edwin Thompson.)

A. On the 16th?

Q. Yes. [2643]

A. A quarter of a point.

Q. In what direction?

A. I cannot tell you.

Q. Now, have you made a list of those on a piece of paper?

A. I am making it now. I have, yes, sir.

Q. You have before you your book——

A. Yes.

Q. (Continuing) ——that you made contemporaneously regarding the condition of the “Denali’s” compasses on July 21, 1933, Petitioner’s Exhibit 64, haven’t you?

A. Yes, sir.

Q. Now, will you state whether or not the condition of the compasses as recorded in the deck log book of the “Denali” on this voyage in May, 1935, is the same as, or definitely different from the differences between the deviations on the standard and steering compasses of the “Denali” as you found them after you had completed your adjustment in July, 1933?

A. Of course, there is no course——

Q. (Interposing) Will you please answer the question?

Mr. Long: He is trying to.

Mr. Ryan: Yes.

A. Of course there is no course here the same as in the book that we took the deviations on.

(Testimony of G. Edwin Thompson.)

Mr. Bogle: You say that there is no course——

Q. (By Mr. Ryan) Do you mean that——

Mr. Bogle: (Interposing) I would like to get that. You say there are no courses here?

The Witness: Yes.

Mr. Bogle: What are you referring to? [2644]

The Witness: These courses that counsel has referred to out of the log book are all different courses from those that we took deviations on at the time that we adjusted the compasses.

Q. (By Mr. Ryan) Do you mean to say that by using the deviation cards that you prepared the officers on the ship would not be able to know what the deviations were on the courses that were recorded in that log book?

A. I didn't say that.

Q. If they had used the ship immediately after you had completed adjusting the compasses?

A. I didn't say that.

Q. Then what do you mean?

A. You wanted to know—in mentioning these courses—if there was any extreme difference between the deviations that are in the log book and what were on the card a year and a half before.

Q. Yes. Now, look at your courses and answer that question.

A. There is a little difference than what they would be between these deviations, but nothing serious.

Q. State what differences there are.

(Testimony of G. Edwin Thompson.)

A. They might vary two degrees difference.

Q. State what they are.

A. I cannot state what they are.

Q. You have both books before you and you cannot——

A. (Interposing) I cannot state what they are because these headings here are a little different than what they are in the book here (indicating).

Q. Of course they are. State what the differences are.

A. I would have to do considerable mathematical calculation [2645] to find out exactly what they are.

Q. What? To just subtract one from the other requires a lot of calculation?

A. Well, you want to know exactly, Mr. Ryan.

Q. I know, but I have only asked you about six or seven headings.

A. Sure. If you want to know what the exact deviation was on any headings in between here, it would take a mathematical calculation to figure it out exact.

Q. Yes. Go ahead and do it.

The Court: Is there any way that you could approximate it within certain limits so that——

A. (Interposing) It is so unimportant.

The Court: (Continuing) So that you could make your answer fairly certain?

The Witness: The extreme difference here would be about four degrees. [2646]

Q. (By Mr. Ryan) What would that indicate to you in reference to a change in the condition

(Testimony of G. Edwin Thompson.)

of the compasses, between the time you adjusted them in 1933 and the time when their differences are recorded in May, 1935?

A. There would be some change.

Q. You testified that the compasses could be adjusted down to half a degree, or a degree; now, here we have four degrees difference, a 400 per cent greater error than existed when you examined them. What significance has that for you as a compass adjuster?

A. I said that you could adjust on certain headings down to within half a degree, and those are on the cardinal points and the quadrantal points.

Q. What do you say about that four degrees change in the deviation of the compasses, that is, the difference between the standard and steering compasses, on that heading? In July, 1933 it was zero.

A. Yes.

Q. And in May, 1935, the difference in the deviations between the standard and steering compasses was four degrees, that is right, isn't it?

A. Approximately, yes.

Q. What does that indicate to you as a compass adjuster with reference to the change in the condition of those compasses, and the magnetism change?

A. Nothing serious, to my mind.

Q. A four degree difference doesn't indicate anything to you, as a compass adjuster?

A. Not when you know what it is, no.

(Testimony of G. Edwin Thompson.)

Q. Suppose you don't know what it is? [2647]

A. Well, that is what the officers of the ship have to find out and keep track of.

Q. It is your job if you are hired to do it, isn't it?

A. I am hired to reduce the errors.

Q. You could have reduced four degrees down to one degree, couldn't you?

A. It could have been reduced. I don't know just exactly how much.

Q. If it could not have been reduced there was something still very seriously wrong with the compasses, wasn't there?

A. No.

Q. If you couldn't get it down below four degrees you think the compasses were all right, notwithstanding your testimony here this morning that you could adjust them down to one degree?

A. It doesn't mean there was anything the matter with the compasses at all. There might have been some iron very close by the compasses that would cause deviations like that, that couldn't be corrected.

Q. Anyway, there was something wrong with the compasses when they showed four degrees deviation, a difference between the deviations on the standard and steering compasses, when you know of your own knowledge those same compasses showed zero degrees difference when you examined them before?

A. Nothing wrong with the compasses.

(Testimony of G. Edwin Thompson.)

Q. Something had happened to make that difference, an increase of 400 per cent?

A. Yes; but nothing happened to the compasses. Something [2648] happened to the ship.

Q. How do you know it didn't happen to the compass?

Mr. Long: Let him finish his answer.

The Witness: It is the character of the ship that changes, not the compasses.

Q. Then it indicates to you that the character of the ship, as to her magnetism or magnetic field, had changed, seriously, between the time you examined those compasses and adjusted them in 1933 and the time this ship sailed in 1935, isn't that so?

A. Not seriously.

Q. Well, how much?

A. Four degrees.

Q. Well, that is all you know on that heading, isn't it; four degrees on that heading?

A. That is the extreme. The rest of them have been all less than that.

Q. On these other unknown headings it might have been much more than that?

A. You picked out the extreme here on all those courses.

Q. On the headings on which the deviation was unknown, if there was four degrees on that, that would indicate you ought to adjust it and reduce the error on all the headings, doesn't it? I mean as a matter of good practice, if you found that

(Testimony of G. Edwin Thompson.)

condition you would adjust the compasses, wouldn't you?

A. I didn't get the question.

Q. As a matter of good and safe practice, if you had found this condition that existed, according to this log book of the "Denali", in May, 1935, you would have ad- [2649] justed the compasses, wouldn't you?

A. Are you speaking to me as if I had been the captain of the ship?

Q. If you had been called in to adjust those compasses, and you found four degrees difference there, when you had previously examined those very same compasses before and found no difference on that heading, and you didn't know what the deviation was on certain other headings, you would have adjusted the correctors, wouldn't you, to reduce that down, as a matter of good practice?

A. If I had been called in as a compass adjuster, yes.

Q. Of course you would. And it would require the services of a compass adjuster to do that, wouldn't it, under the practice here in Seattle?

A. Yes.

Q. And you were not called in. Now, you understand that when I have been asking you about the deviations you found in 1933 that I have in every instance been referring to the deviations you found after you had completed your adjustment, and as you recorded them in your memorandum book there.

A. Yes; I understand that.

(Testimony of G. Edwin Thompson.)

Q. What could cause a four degree change in the difference between the deviations on a standard compass and the steering compass?

The Court: I think he has already said that it would be the nature of the cargo or the condition of the ship. Is there anything else that you think of, Mr. Thompson?

The Court: There is quite a few things, and principally the structure of the ship. [2650]

Q. Change in the magnetism of the ship, due to some cause?

A. Yes.

Q. And something might happen to the compass itself, might it not, something happen to the pivot, or it gets sluggish, or a bubble, or things of that sort—they could cause a change like that, couldn't they?

A. No; I wouldn't say that.

Q. If one of the compasses had something happen to its pivot—

A. (Interposing) Yes.

Q. (Continuing) Wouldn't that tend to throw it out four degrees; couldn't that do it, as compared with the steering compass?

A. Yes; if it stuck it would have a different reading from the other compass.

Q. And if a bubble got in there that would cause that compass that had the bubble in it to differ, wouldn't it?

A. A large bubble, yes.

(Testimony of G. Edwin Thompson.)

Q. And if the lubber's line had gotten out of position for some reason on one compass, that would tend to throw that compass off somewhat with reference to the other compass, wouldn't it?

A. The lubber's line couldn't shift.

Q. Well, the compass itself could shift for some reason, couldn't it?

A. No.

Q. I mean the reading of the compass could—the compass card could move?

A. No.

Q. It couldn't shift? [2651]

A. It couldn't shift.

Q. It could stick?

A. Yes.

Q. So if the lubber's line moved it wouldn't move that much, it would move sluggishly, wouldn't it, or not at all?

A. Oh, yes.

Q. There are a lot of things that could happen that could cause that change, the difference between the deviations on the standard and steering compasses from one time to another, isn't that so?

A. On the magnetic compass things do not happen quickly like that; it takes a long, long time. It is very gradual. They couldn't have a magnetic good course this morning and this afternoon have the compass off $\frac{3}{8}$ of a point, or something like that. It would be very, very gradual.

Q. Yes, but say—this is just for illustration—suppose the compass should be lying so long, and the

(Testimony of G. Edwin Thompson.)

ship lying so long on that one head that it got magnetised on that heading——

Mr. Long: I object to that as not cross examination.

The Court: The objection is overruled. This is the kind of inquiries the Court has been trying to get from both counsel since the start of the trial, and this is information that I have been seeking all the time. Proceed. I wish we had got at this the first day of the trial, because then we would have shortened it a great deal. Read the question. (Question read as follows:

“Q. Yes, but say—this is just for illustration—suppose the compass should be lying so long, and [2652] the ship lying so long on that one head that it got magnetized on that heading——”).

Q. (By Mr. Ryan—continuing) Then when that ship went out and made a swing to the North of a large number of degrees, that condition might reasonably cause a difference between the standard and steering compasses, might it not?

A. Yes.

Q. A change in the magnetic field surrounding the compass would cause such a change in the difference between the deviations on the standard and steering compasses as you have described, wouldn't it?

A. Yes.

(Testimony of G. Edwin Thompson.)

Q. And such a change in the magnetic field could reasonably result from the ship lying on one heading for a long period, couldn't it?

A. I would say not that much difference.

Q. Well, you don't know how much difference, do you, unless you adjust it.

A. There is $\frac{3}{8}$ of a point difference there.

Q. You do not know what caused that difference, do you?

A. No. Ordinarily——

Q. (Interposing) But do you know what caused that difference?

Mr. Long: Let the witness answer the question.

The Court: The objection is overruled.

Mr. Long: Exception.

The Court: Allowed. (Last question read.)

A. I would answer that, that lying——

Q. (By Mr. Ryan—Interposing) Do you understand the question? Read it to him. [2653]

A. I am working around to it.

Q. But answer the question first, and then if you want to explain it, go ahead.

A. Well, you will have to read the question again, then. (Question re-read.) No.

Q. Now, if all you knew was that there was a four degree difference that had crept in there between the deviations on the standard compass, as compared with the deviations on the steering compass, and you didn't know what caused it, and you knew you had examined those same compasses some

(Testimony of G. Edwin Thompson.)

time before and there was no difference between them on that heading, then those compasses would require an examination by you, and adjustment by you, to correct that four degree deviation on that heading, and to correct any unknown deviations on other headings which might be as large or much larger, isn't that so?

A. No, no.

Q. What?

A. No. If there is a difference between the two compasses that way it might be caused by some local attraction, something temporarily close by the compass, and you certainly wouldn't adjust the compass without finding out what it was, and if it was something temporary you would remove it if you could, and if you couldn't, like part of the cargo, all you do is keep note of it, allow these errors, and wait until that cargo is taken off and then check the compasses again.

Q. Suppose that difference does not result from the cargo that you put on, that is, from this local attraction you talk about, then those compasses require adjustment to [2654] reduce them down, do they not?

A. I am afraid we do not understand each other.

Q. Do you understand the question? Read it.

(Last question read.)

A. A compass adjuster——

Q. (Interposing) Answer that first, and if you want to explain it, go on.

(Testimony of G. Edwin Thompson.)

The Court: If you know.

The Witness: I guess you will have to read it again. (Question re-read.) They would have to be adjusted if you want to reduce it down, yes.

Q. And that is always the good and safe practice, to reduce the deviations down to the low limits, like you compass adjusters do here, isn't it? Isn't that always good and safe practice?

A. Well——

Q. (Interposing) Answer that yes or no, and then go on and explain, if you want to.

A. Well, I would say it probably is, yes.

Q. Yes——

A. (Continuing) But you couldn't have a compass adjuster following around on all changes like those that are usually caused by local attraction.

Q. But you just testified you didn't know what caused this change?

A. Well, I do not.

Q. If it did not result from some local attraction on the ship, and you were called in, you would change the correctors and the magnets, and the Flinders bars, and the quadrantal balls, and that sort of thing, to adjust [2655] that compass so it would be safe, would you not, and reduce the deviation to low limits.

A. Yes; if we were called in.

Q. Now, you do not know of your own knowledge any local attraction existing on board the "Denali" that would account for this difference, do you?—of your own knowledge.

(Testimony of G. Edwin Thompson.)

A. All ships are full of local attraction.

Q. But you do not know any that existed on the "Denali" on this voyage?

A. I do not know of any particular spot that changed from the time we adjusted them until these deviations were taken, the cause.

Q. Yes; that is what I thought. So that so far as you know, this is just a plain case of a situation where the compasses required adjustment, because you do not know of any little local attraction that had changed on the "Denali" during that period?

Mr. Bogle: I shall object to that, if Your Honor please.

Q. (Continuing) Isn't that it?

Mr. Bogle: The witness has said he wasn't there, and he doesn't know.

The Court: The objection is overruled, unless it is repetitious.

The Witness: I answered that before, that same question.

The Court: That same question?

The Witness: Yes, Your Honor.

The Court: All right; the witness says that he has [2656] answered before.

Mr. Ryan: All right. I will try not to repeat.

Q. (By Mr. Ryan) Now, on this memorandum book that is here I notice that there is a page pasted in here, right alongside the "Denali" entry——

A. (Interposing) With no reference to the "Denali".

(Testimony of G. Edwin Thompson.)

Q. There is no reference to any other ship, is there?

A. Yes.

Q. On that page?

A. No.

Q. Look at it.

A. It is attached to this other succeeding page.

Q. There is no reference to any other ship on that page, is there, any other ship than the "Denali"?

A. There is no reference to any ship on this attached page. It is attached to the other page, and not attached to the "Denali" page.

Q. It is pasted in as the page right following the "Denali", isn't it?

A. No; it is pasted on the next page. It is a rider on that next job.

Q. Well, the page that the "Denali" is on is full; you couldn't put it on that page, could you?

A. That is the reason that rider was put in there, because this other page was full, and the rider was put on top of it.

Q. Now, this other page that you talked about, that is pasted in here, that does not refer to any other kind of compass than that that was on the "Denali", does it?

A. I will have to look it over and see. [2657]

The Court: Why don't you ask him directly whether or not that page has anything to do with the "Denali", or any circumstance akin to that circumstance of the "Denali"?

(Testimony of G. Edwin Thompson.)

Mr. Ryan: Yes, Your Honor.

The Witness: It has not.

Q. (By Mr. Ryan) Do you know of your own knowledge that it has not, that page?

A. I do.

Q. How do you happen to remember that?

A. I remember all the details of this job.

Q. Well, I do not want to impeach you on that. When did you first discover that you had had anything to do with adjusting the compasses on the "Denali", since, say, May, 1935?

A. I remember about it at the time of the accident. I remembered that we had adjusted it last.

Q. You are sure you remembered in the fall of 1935 that you were the one who had adjusted the compasses on the "Denali"?

A. Yes.

Q. In 1933?

A. Yes.

Q. You remembered it at that time?

A. Yes.

Q. You didn't figure out or compute the coefficients when you adjusted the compasses of the "Denali" in 1933, did you?

A. Yes, I did.

Q. Where are they? [2658]

A. I didn't attach them there.

Q. There are coefficients on this page that is pasted in here, are there not?

A. Yes.

(Testimony of G. Edwin Thompson.)

Q. You mean to say you had some other record book besides this?

A. Let me tell you that this other compass job here, the reason of that information and everything, as I say, was because it was an exceedingly bad job, and that is why all those notes. Any of these that are just routine jobs, and we haven't any notes, that is because everything around the boat was all very satisfactory.

Q. There are plenty in this book that have the coefficients all computed out?

A. There may be some.

Q. There are a lot of them, aren't there?

A. I don't know. I haven't looked through it to see.

Q. You say you did figure it out for the "Denali"?

A. Yes.

Q. And you recorded it somewhere?

The Court: That is not what he said, Mr. Ryan. He said that where it was a more or less routine job he didn't go to the trouble of putting down all those notations, but that in the instance you have called his attention to it was an involved job, and that he did put down that rider.

Mr. Ryan: If Your Honor please, I think you overlooked the answer that he gave just before that. He said he did figure them out for the "Denali".

Q. (By Mr. Ryan) You did figure out the coefficients for the [2659] "Denali", didn't you?

(Testimony of G. Edwin Thompson.)

A. Just the other day I did.

Q. Did you figure them out at the time you made the adjustment, in 1933?

A. At the time I did the job I did it, to see whether the deviations are reduced to a minimum or not.

Q. You have to do that in writing?

A. No; you can do it in your head.

Q. Did you do it in writing when you did it in connection with the "Denali", in 1933?

A. I probably did it in my head.

Q. You do not know which way you did it?

A. I probably didn't write it, no. It is too simple.

Q. At any rate, it is not in this book?

A. It is too simple; you do not have to figure it on paper.

Q. Now, these differences that you have pointed out between the deck log entries in May, 1935, with reference to the deviations of the "Denali" on her standard and steering compasses, as compared with the deviations you found in 1933 on those same compasses, those indicate a change in the form of the deviation curve, do they not?

A. They do.

Q. When the form of the deviation curve has been changed, that means the compasses must be adjusted, under ordinary and safe practice, does it not?

A. It does not.

(Testimony of G. Edwin Thompson.)

Q. It does not?

A. No.

Q. Why not?

A. Because they couldn't adjust the compasses on a boat [2660] every time they load or unload some cargo on the deck. You couldn't have a compass adjuster following around from one port to another.

Q. Wait a minute; assume the cargo on deck had nothing to do with the compasses, the readings on the compasses, isn't it true that that change that occurred in 1935 in the deviations on the standard and steering compasses of the "Denali", as compared with the deviation as you found it, showed such a change in the form of the deviation curve from those previous readings of the compasses to show that they required adjustment by a compass adjuster?

A. No.

Q. Why not?

A. The deviations are not large.

Q. Why, you don't know what they are—there were four degrees on one heading.

A. Four degrees is the most I found.

Mr. Long: If Your Honor please, I object to this.

The Court: This is argument with the witness, Mr. Ryan, and that will not help the Court in deciding the case. Ask him what he thinks about it, and reasonably try to get his information.

Q. (By Mr. Ryan) Four degrees is too large a deviation to be permitted safely to exist on a compass, which you have proved by experience can be reduced, so far as its natural deviation is concerned, down to much less than that; isn't that so?

A. I will have to answer your question another way; the deviations couldn't be that much unless there was some [2661] local attraction there. If you adjusted the compasses every time there would be some local attraction, then every time it was removed it would be off again.

Q. Either local attraction or retained magnetism, or something else?

A. It might be one of any number of things.

Q. But there is some dangerous condition existing there; that much is known, isn't it?

A. It is not dangerous when you know what the deviation is.

Q. Well, you testified before lunch that this retained magnetism is of a peculiar and changeable character, didn't you?

A. I didn't say it was peculiar. It is changeable.

Q. It is changeable?

A. It is changeable, yes.

Q. Yes; it *is* keeps changing over the course of two or three weeks, or a week, and it might be very different from what it was at the start?

A. It is very temporary.

Q. Certainly.

The Court: Are you going over the same thing again?

(Testimony of G. Edwin Thompson.)

Mr. Ryan: No, Your Honor.

The Court: The Court has been instructed a great deal by the testimony of this witness on both direct and cross examination at this time, but it seems to me that you are exhausting the subject matter now.

Mr. Ryan: That is all, if Your Honor please.

[2662]

Further Redirect Examination.

By Mr. Bogle:

Q. Mr. Thompson, upon what heading was there a four degree deviation, as shown by the log book?

A. West by North $\frac{5}{8}$ North.

Q. How do you find from the log book entry that there was a four degree variation on that course?

A. The difference between the two compasses.

Q. Why, certainly. This deviation of four degrees that you are talking about, you mean to say there were four degrees between the reading of the standard compass and the steering compass, on that course?

A. That is right.

Q. That is the difference between the two, but counsel has not given you any indication as to what the deviation was on either of those courses?

A. No, sir.

Q. Referring to it as a four per cent deviation, is that correct?

(Testimony of G. Edwin Thompson.)

Mr. Ryan: (Interposing) Just a moment; there is no reference to four per cent; it is four degrees.

Mr. Bogle: I beg your pardon—four per cent deviation is not correct.

Mr. Ryan: There is nothing to indicate that it was four per cent.

Q. (By Mr. Bogle) Can you tell from your 1933 card, or your books, by reference to the log book, what the deviation was on any course in the log book?

A. I haven't the book here. Yes; Northwest is listed here.

Q. What was the deviation on Northwest?

[2663]

A. There was one degree difference between them, and here it shows $\frac{1}{8}$ of a point; approximately a degree and a half.

Q. In other words, the difference between your 1933 adjustment on that heading, the difference between the two compasses, is how much?

A. The difference in the book here is one degree, and the difference in the log book is $\frac{1}{8}$ of a point, approximately a degree and a half—a little less.

Q. A degree and a half?

A. Yes.

Q. Do you find from the courses that you can tell what difference there was in the deviation?

A. That is on these days referred to above, or shall I search clear through the book?

Q. On the days that have been referred to. I do not want you to go through the whole book.

(Testimony of G. Edwin Thompson.)

A. That is the only one of those two days.

Q. And in your 1933 adjustment there was a difference on certain headings of as much as a degree, wasn't there?—or two degrees?

A. Two degrees.

Q. How did you make your compensations, swing the ship? How did you get the deviation on the standard compass and the deviation on the pilot house compass?

A. With an azimuth error on the standard compass, and then by comparison with the steering compass with the standard.

Q. You got your deviation on your pilot house compass, or steering compass, by comparing it, putting it on the [2664] standard on a certain course and then comparing to see what course the steering compass was on, didn't you?

A. Yes.

Mr. Ryan: May I object to this as not proper redirect examination.

Mr. Bogle: This was all brought out on cross examination, Your Honor.

The Court: Yes; the objection is overruled.

The Witness: You put the ship on a heading approximately within a degree or so of the course you want to check, and then ascertain the deviation of the standard compass, and that is compared with the steering compass, with the corrected reading of the standard compass. [2665]

Q. You say that you have had no seafaring experience?

(Testimony of G. Edwin Thompson.)

A. I have not.

Q. You would not know whether a difference of four degrees, as the maximum between the standard compass and the steering compass, was normal or excessive?

Mr. Ryan: Just a minute. I object to that.

The Court: You mean from the standpoint of a navigator?

Mr. Bogle: Yes; that is right.

The Court: You mean from the standpoint of a navigator?

Mr. Bogle: Yes.

The Court: If he knows that, he may answer.

Mr. Bogle: Yes, if he knows that.

The Court: Yes.

Q. If you know that, you can say so.

A. I would say that it was very common.

Q. Assume at the time that these courses were steered as have been referred to by Mr. Ryan, that the vessel had on her well deck a considerable cargo—deck cargo consisting of trucks, boilers, rock crushers and other cargo with magnetic tendencies, would you expect that to have any effect upon your compasses?

A. It might have.

Q. Would that account for this difference between the two compasses that you have spoken of?

A. That is very possible.

Q. Is that the ordinary cause for those differences?

A. Yes, sir.

(Testimony of G. Edwin Thompson.)

Mr. Ryan: I object to that question. This man [2666] cannot answer that. This man is not a mariner. He does not know——

The Court: (Interposing) Are you objecting to it on the ground that it is leading?

Mr. Ryan: Yes, on the ground that it is leading.

The Court: Yes, it is.

Mr. Bogle: Of course, I am going into a subject that was not touched on on direct, Your Honor.

The Court: That may be.

Mr. Bogle: It is hard for me to touch on something that was not really gone into on direct, but was brought out on cross without leading.

The Court: That is not the point. I would suggest that you try to avoid leading, if you can. You may proceed. I will overrule the objection made.

Mr. Bogle: I will try not to lead him, Your Honor.

The Court: Proceed.

Q. (By Mr. Bogle) You are familiar with the "Denali"?

A. Yes, sir.

Q. And with her construction?

A. Yes, sir.

Q. The cargo that was loaded on her well deck such as I have described, would that cargo be closer to the steering compass or to the standard compass?

A. Closer to the steering compass.

Q. And in your mind might it have more effect upon one compass than on the other?

A. Very probably.

(Testimony of G. Edwin Thompson.)

Q. And when you referred to local attraction, I will ask you in your experience what is the most common form of local [2667] attraction that has an effect on a compass?

A. The cargo.

Q. Now, Mr. Thompson, if you had adjusted this compass and compensated it down as close as you could before this vessel loaded cargo, and she had afterwards put this deck cargo on which I have described, would your adjustment and deviation card be one that the master could rely on?

A. No, sir.

Mr. Ryan: Just a minute. The witness has stated that all he knows, under the statement that Mr. Bogle made, was a mere possibility. Now, he is being asked to state positively what the effect of something is there, and the conditions as shown by the evidence and in the record, introduced by the petitioner itself, established that the loading was such that this iron could not affect the cargo in the opinion of the man that loaded the ship, and here they are speculating on the opposite evidence, even calling this man's attention to the actual loading.

The Court: Objection overruled. The witness may go into that.

Mr. Bogle: Read the question.

(Question and answer read as follows:

“Q. Now, Mr. Thompson, if you had adjusted this compass and compensated it down as close as you could before this vessel loaded cargo, and she had afterwards put this deck

(Testimony of G. Edwin Thompson.)

cargo on that I have described, would your adjustment and deviation card be one that the master could rely on? [2668]

A. No, sir.”)

Q. (By Mr. Bogle) Why not?

A. Our card is for the conditions existing at the time of adjusting, and not afterwards.

Q. What is the condition of the ship when you make your adjustment?

A. Well, it is usually light. Sometimes it has part cargo.

Q. Assuming that after the deck cargo is on the master took azimuths from the standard compass over fourteen points, would the error found by those azimuths be more accurate than a compensation that you had made before the cargo was loaded?

Mr. Ryan: That is objected to on the ground that the full conditions are not stated as shown by the evidence, and on the ground that the witness is asked to speculate as to how somebody else did something else, and how it compared with some previous condition. That is purely speculative and not based on facts.

The Court: Objection overruled.

Mr. Ryan: Exception.

The Court: Exception allowed.

Mr. Bogle: Read the question.

(Testimony of G. Edwin Thompson.)

(Question read as follows:

“Assuming that after the deck cargo is on the master took azimuths from the standard compass over fourteen points, would the error found by those azimuths be more accurate than a compensation that you had made before the cargo was loaded?”)

A. It would be.

Q. (By Mr. Bogle) And after those azimuths were taken, Mr. Thompson, of what use would your deviation card be? [2669]

A. None for that trip.

Q. What was the condition of the ship when you adjusted and compensated the compasses in 1933?

A. I haven't any record of that here.

Q. I mean, do you know of your own recollection whether she was loaded or not?

A. No, I don't remember.

Q. There is nothing to show that?

A. No.

Mr. Bogle: That is all.

Recross Examination

By Mr. Ryan:

Q. If the ship is loaded there is always a record in that book of the fact that the ship is loaded, isn't there?

A. No.

Q. Referring to the memorandum book that you have there in your hand.

(Testimony of G. Edwin Thompson.)

A. No.

Q. Well, there are many references there to the ship being loaded, are there not?

A. None that I know of.

Q. Well, I will call your attention to some. I will return to that in just a minute. Now——

Mr. Bogle: (Interposing) I might ask one question more. May I, Mr. Ryan?

Mr. Ryan: All right.

Mr. Bogle: Have you the log book there?

The Witness: Yes, sir. [2670]

Mr. Bogle: Will you look at that and see what differences there were between the standard and the steering compass on North $\frac{3}{4}$ West and on North $\frac{3}{4}$ East, if you find the latter entry.

Mr. Ryan: Now, I object to that on the ground that the officer of the ship who made the entries has already testified that he made entries North $\frac{3}{4}$ West in there which were false and he knew them to be false at the time that he made them.

Mr. Bogle: I object to that statement, if Your Honor please.

Mr. Ryan: And I do not think that that is a proper ground for calling a witness—an expert witness on now——

The Court: (Interposing) Objection overruled.

Mr. Bogle: I object to that statement, if Your Honor please. That is not the testimony.

The Court: I do not recall any such testimony. But I also recall what was said that counsel is now referring to.

(Testimony of G. Edwin Thompson.)

The Witness: I found a North $\frac{3}{4}$ West by the standard compass and a North $\frac{3}{4}$ West by the bridge compass here on the 19th.

Mr. Bogle: That is all.

Q. (By Mr. Ryan) Will you look at the log book and note the difference between the standard and steering compasses on this trip?

A. The whole trip?

Q. Yes.

Mr. Bogle: I do not think that that is proper [2671] recross.

Q. (By Mr. Ryan) Do you see that in each case the steering compass course is to the west of the standard compass course?

The Court: We are not playing a game of tit tat, and trying to determine which one has a chance to say "tit" last, or "tat" last.

Mr. Bogle: It looks like it.

Mr. Ryan: Counsel interrupted me. I was not finished.

The Court: What was there on redirect to elicit this?

Mr. Ryan: I am almost through with him. I have just two questions—not more than two questions.

The Court: Proceed.

Q. (By Mr. Ryan) Will you look at the log book of the "Denali" that you have in your hand and note the difference between the standard and steering compasses on this voyage in May, 1935.

(Testimony of G. Edwin Thompson.)

A. Yes.

Q. Now, do you see that in each case the steering compass course is to the west of the standard compass course?

A. Not in every case.

Q. In how many cases is it?

A. In most of them it is.

Q. Now, name me one in which it is not.

A. On Northwest by West by the standard compass.

Q. And what was it by steering?

A. Northwest $\frac{3}{4}$ West.

Q. Well, outside of that single entry in that whole log [2672] book don't you see that in each case the steering compass course is to the west of the standard compass course?

A. Yes.

Q. That is, the difference is always—runs to the west, doesn't it?

A. Yes, sir.

Q. All right. Now, when you look at the deviation notes in your book which you made in July, 1933, on those same compasses, isn't it a fact that the differences sometimes are east and sometimes west, and sometimes zero?

A. I have not the book.

Q. Where is the book?

Mr. Long: Your co-counsel has it.

Mr. Ryan: Oh, yes.

Q. (By Mr. Ryan) I hand you the book, Petitioner's Exhibit 64—

(Testimony of G. Edwin Thompson.)

Mr. Bogle: (Interposing) May I admit that, to save a little time? Some of them are east, some of them are west, and some of them are nothing.

The Court: Well, it may be that he wishes to ask this witness that for some particular reason.

Mr. Bogle: All right.

A. They are.

Q. (By Mr. Ryan) In other words, there is a definite trend in one direction, isn't there, so far as the entries in the deck log of the "Denali" in May, 1935, are concerned?

A. Yes.

Q. And that direction is west? [2673]

A. Yes.

Q. Now, doesn't that indicate to you, as a compass adjuster, that there has been a change in the magnetic conditions concerning those compasses?

A. Yes.

The Court: Induced by any of these causes or reasons that you have spoken of?

The Witness: Yes. Probably the cargo.

Q. (By Mr. Ryan) Or what other reasons probably would cause that?

A. I cannot think of anything else that would cause that much difference.

Q. Retained magnetism in a ship—

A. (Interposing) No.

Q. (Continuing) Would cause a change in the deviation curve such as that indicates, would it not?

A. It would not cause four degrees difference between the two compasses.

(Testimony of G. Edwin Thompson.)

Q. Have you ever made any experiments to determine the amount of deviation that would exist under those conditions?

A. Not on this ship.

Mr. Bogle: Now, I object to this——

Q. (Interposing) You have not?

Mr. Bogle: I object to this as not being proper recross. This is repetitious. We have been all over this before, and he is starting all over again.

Mr. Ryan: No, I am not. I am practically through.

Mr. Bogle: It is all speculative, and it cannot be of any value. [2674]

The Court: Counsel may proceed in view of his statement that he is practically through.

Q. (By Mr. Ryan) In this book—in this memorandum book of yours, will you look at page 3495 to see whether there is any record there of whether or not cargo has been loaded at the time that that adjustment was made?

Mr. Bogle: I object to that as immaterial to this inquiry. I do not know what time this is.

The Court: That objection is sustained. Which one do you mean? At what time?

Mr. Long: And it has nothing to do with the "Denali", Your Honor; some other ship he is talking about.

Mr. Ryan: If the Court please, I asked the witness a while ago if there was not a record made in the book whenever there was a cargo loaded on

(Testimony of G. Edwin Thompson.)

the ship at the time that the adjustment was made, and he said there was not. I am just calling his attention to such a record.

The Court: Why do you not give him the page?

Mr. Ryan: I did give him the page.

The Court: Tell him to look at such and such a place or at such and such a page and state if he was not mistaken about that.

Mr. Ryan: Yes. I will do that.

Q. (By Mr. Ryan) Look at that page that I have just given you, 3495 and tell me now if you are not mistaken about there being no entry in the book at any time that cargo was loaded at the time that the adjustment was made.

A. You asked me if there were any in this book, and at that [2675] time I said "No," because I didn't find any.

Q. But you now do see one entry of that kind by looking here (indicating)?

A. Yes, sir. I explained before that only these notes were made when there was something bad around the compass, and when there was no such note made it was because there was nothing bad around the compass. Now, it says here, "Deviation with cargo on deck. Retort on deck", referring to the deck on a certain ship. That means that a certain bad condition was there, and that is why that entry was made.

Mr. Long: Now, I object to all this, if Your Honor please.

(Testimony of G. Edwin Thompson.)

The Court: That is asking him with reference to a collateral matter, as to whether adjustment conditions surrounding his work on other ships were similar or dissimilar.

Mr. Ryan: That is all.

The Court: You may be excused, Mr. Thompson. Call your next witness.

(Witness excused.)

Mr. Bogle: Would it be possible at this time, for the benefit of the Court to find out whether we can make any stipulation with reference to this book?

The Court: Is it now possible to do that?

Mr. Ryan: Yes.

Mr. Summers: I think that we will be ready to make a stipulation after we have had an agreement with respect to what should be photostated. [2676]

The Court: I think that you ought to be able to agree on photostating certain pages and let him have the book back.

Mr. Summers: Yes, Your Honor, but I think that we should not let the book be released at this time, but at a later time, so that we can have an agreement as to the pages of the book to be photostated.

Mr. Bogle: That is all right.

The Court: Very well. Call your next witness. I believe there is a witness on the stand. Captain Glass, will you resume the stand?

(Testimony of Sylvester Glass.)

Mr. Thompson, you are excused from further appearing as a witness unless you are recalled.

Mr. Thompson: All right.

SYLVESTER GLASS,

resumed the stand for further examination.

Mr. Ryan: If the Court please, before the examination proceeds, may I ask that the five arrows that this witness indicated on that chart be marked with some designation so that they can be differentiated from one another and identified—that is, let the witness mark them “1”, “2”, “3”, “4”, “5”, or “a”, “b”, “c”, “d”, and “e”, or something like that?

The Court: I do not think Mr. Bogle finished on that subject.

Mr. Bogle: No, no. I have got a few other marks that I want the witness to put on, and then I will have [2677] those identified.

Mr. Ryan: I wanted those designated before some others were put on there, or else we will never be able to find those five marks.

The Court: Your request is denied at this time. Proceed.

Further Direct Examination.

By Mr. Bogle:

Q. Captain, you have made certain marks here in blue pencil——

(Testimony of Sylvester Glass.)

Mr. Ryan: (Interposing) May I offer this little sketch that the witness Thompson wrote on a piece of yellow paper—that is, the witness Thompson—in evidence as Claimants' Exhibit—

Mr. Bogle: (Interposing) I would object to that in the absence of the witness. I have not seen the sketch, and I have not had the opportunity of examining him on that.

The Court: See if upon further examination, Mr. Bogle, that cannot go in. The Court will act upon that later, if you will call the Court's attention to it after counsel has had a chance to inspect it.

Mr. Ryan: Yes. Could I have it identified by the clerk?

The Court: It may be marked for identification Claimants' A-13 in connection with Thompson's testimony.

(Sketch on yellow paper made by witness Thompson marked for identification as Claimants' Exhibit A-13.) [2678]

The Court: Now, you may proceed.

Q. (By Mr. Bogle) Captain, in your experience making voyages through Hecate Straits and Caa-mano Passage, what was your usual route?

A. Well, taking up deep tankers, coming up with tankers there we used to come straight up through Hecate Straits.

Q. What is that?

A. When I was on a regular run up there I always used to go out through Brown's Passage,

(Testimony of Sylvester Glass.)

through Caamano Passage to the west coast of Prince of Wales Island.

Q. Now, Captain, I wanted you to go back and tell me whether or not in your own experience in these waters you know the set of the tide on an ebb current—the set of the water, I should say, on an ebb current adjacent to Brown's passage and to the westward?

A. Yes, sir, I do, from the set of the vessel when I was taking it through there.

Q. Will you note that with arrows and with a blue pencil?

Mr. Ryan: Now, if the Court please, that brings up that very point that I spoke about before. There are already five blue arrows marked on this chart by the witness——

The Court: (Interposing) Objection overruled.

Mr. Bogle: I am going to identify it.

The Court: If on cross examination you find it necessary to have something explained, you may be accorded that right.

The witness: On an ebb tide I noticed the current setting through here (indicating) coming up Triangle [2679] Island——

Q. (By Mr. Bogle) "Through here" does not mean anything.

A. Through Brown's Passage.

Q. Yes.

A. Setting very remarkably to the westward. Also through these passages, through here and running all along here (indicating on chart).

(Testimony of Sylvester Glass.)

Q. Well, that does not mean anything in the record.

A. Well, through Hudson's Bay Passage the current always set to the westward and getting up under the point tip of Dundas Island and getting towards Prince Lobos Island.

Q. Prince Lebo, isn't it?

Mr. Ryan: Now, please. I want the record to show that Mr. Bogle is suggesting something to the witness.

The Court: Objection sustained. Proceed.

Mr. Bogle: I will ask leave then to withdraw that. I didn't think that there was any objection to that.

A. I mean Prince Lebo Island. I always found the speed of the vessel accelerated for a certain distance, which would set the current practically up in this direction (indicating).

The Court: Well, now, that does not mean——

Mr. Bogle: (Interposing) I will have those marked.

The Court: Indicate it in some way.

Q. (By Mr. Bogle) The set of the current which you have indicated with a blue arrow at Brown's Passage, will you mark that with an "A"?

(Witness marks on chart.) [2680]

Q. And the set of the current at Hudson's Bay with a "B".

(Witness marks on chart.)

(Testimony of Sylvester Glass.)

Q. And the set of the current off Prince Lebo with a "C".

(Witness marks on chart.)

Q. Now, Captain, further out from a point abeam of Triple Island—say ten and a half or eleven and a half miles off, do you know what the set of the water is on an ebb tide?

A. On an ebb tide in my experience passing along, any of this land where there is any open passage through here, (indicating on chart), the tide would invariably set to the westward.

Q. Now, Captain, when you identify these first arrows that you drew, I suggest that you make them a little longer so that we can see them.

A. All right.

(Witness marks on chart.)

Q. Will you just follow along now with the letter "D" on the first arrow off of Dundas, and then "E" and "F".

(Witness marks on chart.)

Q. And "G".

(Witness marks on chart.)

Q. Now, I will ask you if the arrows which you have written on the chart with a blue pencil, starting with the one marked "A" up to and including the one marked "G" in your experience has been the set of the tide on an ebb tide——

Mr. Ryan: (Interposing) I object to that as leading.

(Testimony of Sylvester Glass.)

Q. (Continuing) At what period of the tide?

[2681]

Mr. Ryan: Now, I object to that as leading.

The Court: That objection is overruled.

A. I have found in all my trips through Caa-mano Passage that on a vessel making ten miles an hour, or ten knots an hour, I always invariably set on top of Zayas Island. At times I had to haul the ship maybe a distance of,—getting the bearing off of Lebo,—as much as two and a half points to clear Zayas Island.

Q. Captain, I wanted you to identify these various marks from “A” to “G”. What I am interested in now is whether those arrows—any one of those arrows represent the tide at a different time, or whether they all represent the tide at the same period.

A. No, sir. My experience has been that I have found the tide running that way at both stages of the tide—invariably running in that direction.

Q. Well, now, Captain, at what stage of the ebb tide have you found the tide running as indicated by those arrows?

A. Well, we come through there——

Q. (Interposing) Well, I mean at the first hour, or the second hour, or at the end of the ebb.

A. Well, at the first hour you will find it running through there—practically all through the run of the ebb tide the current will run that way.

The Court: At this time we will take a ten minute recess.

(Recess) [2682]

Mr. Bogle: Your Honor, we have Mr. Murphy here in connection with these plans, and I am wondering whether Your Honor wanted to proceed with this witness, Capt. Glass, or go on with Mr. Erlands and Mr. Murphy, who are here.

The Court: Is Mr. Murphy needed back at his business?

Mr. Bogle: I imagine that he is. I know that Mr. Erlands is, because he is the stevedore boss. I am willing to accommodate counsel.

The Court: Is there any objection to trying to finish with Mr. Murphy? As I understand it, he has come back in connection with those plans.

Mr. Bogle: That is correct, Your Honor.

The Court: The plans which were produced here this morning, or the blueprints of the plans, or photostatic copies.

Mr. Ryan: I haven't any objection, except that I have noticed that Mr. Murphy has been around here throughout this trial.

The Court: I have noticed in the last two or three days that we have worked that he was not around quite so much. You can step down, Capt. Glass, and you may come forward, Mr. Murphy.

E. M. MURPHY

recalled as a witness on behalf of Petitioner, being previously duly sworn, testified as follows:

Direct Examination.

By Mr. Bogle:

Q. Mr. Murphy, you have already been sworn in this case? [2683]

A. Yes, sir.

Q. Have you been able to obtain from the company a copy of the drawings and blueprints of the "Denali"?

A. I have here a print known as the General Arrangement Plan, which is the builder's print of the "Denali" and the sister ships.

Q. That is marked by the hull number?

A. All three hull numbers, Nos. 86, 87 and 88. The "Denali" was built as the "Jeptha", as Hull No. 86.

Q. So this is a correct drawing of the steamship "Denali"?

A. As she was built, yes.

Mr. Bogle: We now produce this for counsel, in response to his demand.

Mr. Summers: We suggest, if Your Honor please, that since the Claimants have produced a plan bearing the same number that Mr. Murphy make comparison, and that the plan produced by the Claimants be admitted in evidence, since it has been already identified, if comparison shows that it is the same plan.

(Testimony of E. M. Murphy.)

The Court: Do you want to cross examine on that, Mr. Ryan?

Mr. Ryan: I want to ask if this is the same plan.

Q. (By Mr. Ryan) Isn't this plan you have just produced the same plan, exactly, as Claimants' Exhibit A-8 for Identification?

A. Yes; it is the same. It is the plan for Nos. 86, 87 and 88.

Mr. Ryan: I have no objection to counsel offering in evidence that plan.

The Court: The one that Mr. Murphy brought today has [2684] not been marked, has it?

Mr. Bogle: It has not been, Your Honor.

The Court: Is there any objection to introducing in evidence at this time Claimants' Exhibit A-8?

Mr. Ryan: I would like to have the one produced in evidence. This is our own copy, Your Honor.

Mr. Bogle: And this is our copy, too, but we will put it in evidence.

The Court: One of them has been marked.

Mr. Long: So the record will be clear, this one we now have, that Mr. Murphy has produced, was taken off the steamship "Oduna", which was framed under glass, and there was a copy of it on the "Denali", as I stated this morning, which was lost on the ship.

The Court: It is identical?

Mr. Bogle: It is identical, Your Honor.

(Testimony of E. M. Murphy.)

The Witness: Yes. There were three ships that were identical, Hulls Nos. 86, 87 and 88, and the Alaska Steamship Company owned all of them.

The Court: The copy of the plans produced by Mr. Murphy just now, which are identified and marked as Petitioner's Exhibit No. 65, there being no objection to them, the plans are now admitted in evidence.

Mr. Bogle: These plans are produced in response to a demand.

The Court: Yes.

Mr. Bogle: And we will offer them in evidence.

The Court: Yes; as Petitioner's Exhibit No. 65, now admitted.

(Plans received in [2685] evidence Petitioner's Exhibit No. 65.)

Mr. Bogle: Is there any examination, Mr. Ryan?

Mr. Ryan: Yes.

Cross Examination

By Mr. Ryan:

Q. Is that the only builder's plan of the "Denali" that you have been able to find?

A. Of the general arrangement, yes.

Q. Well, of any other arrangement, or any part of the "Denali"?

A. That is all.

Q. You haven't been able to find any other plans covering the steamship "Denali"?

(Testimony of E. M. Murphy.)

A. There is a midship section.

Q. Well, I would like to see that.

A. I haven't seen it. You have the midship section some place, the plan, and it may be the same.

Mr. Bogle: Would you look these documents over, Mr. Murphy, and see if any of them pertain to the "Denali". (Handing certain documents to the witness.)

Mr. Ryan: You are referring to the plans you produced this morning at the opening of court?

Mr. Bogle: I am.

The Witness: These are not. This is Hull No. 85 (showing). Here is one of her boilers, if it will do any good. It is not an arrangement plan. And this midship section is for Hulls Nos. 83, 84 and 85, and while they may be similar, they are not an actual print of her, [2686] because she was built as No. 86.

Mr. Bogle: Then you could not identify that plan?

The Witness: No.

Mr. Bogle: Are you able to identify any of these as being the actual plans of the "Denali"?

The Witness: No.

Q. (By Mr. Ryan) I show you Claimants' Exhibit A-9 for Identifictaion, and ask you if that is not a builder's plan of the midship section of the steamship "Denali"?

A. No. I see no identification here.

Q. What hull numbers does that refer to?

(Testimony of E. M. Murphy.)

A. This is for Hull 2255 and Hull 2254 and Hull 2253.

Q. Doesn't that say on the title of it "Midship section, Hulls 86, 87 and 88"?

A. Yes, but here it says—

Q. (Interposing) Doesn't it say that?

A. Whereabouts?

Q. Right there (indicating); the title plan, in large letters, "Midship sections, Hulls 86, 87 and 88"?

A. That is correct. This is No. 86.

Q. So you can identify that plan as being the midship section plan of the steamship "Denali"?

A. It is Hull No. 86, yes.

Mr. Ryan: I offer that in evidence as Claimants' Exhibit A-9. There are two builder's plans, Your Honor.

The Court: What was his final statement as to whether or not that pertained to the "Denali"?

Mr. Ryan: That is the midship plan.

The Witness: That is the midship section, Hull No. 86. [2687]

The Court: Then you have corrected what you previously said?

The Witness: Yes. It had three other hull numbers which I do not have identified, but Hull No. 86 I can identify.

Q. As being the steamship "Denali"?

A. As being the steamship "Denali". That is her hull number.

(Testimony of E. M. Murphy.)

The Court: Very well.

Q. (By Mr. Ryan) This first plan that you have produced, this general arrangement plan, Petitioner's Exhibit No. 65, what is this object up here (showing), extending out toward the pilot house of the "Denali"?

A. It is marked as a 30 ton steel boom.

Q. It is a cargo boom, is it not?

A. No, sir; it is what we call a heavy lift boom, a Jumbo boom.

Q. And there is an iron strap around the end of that boom, is there not?

A. That is correct.

Q. And there is a block, a steel block, right below it, or gin block, is there not?

A. That is right.

Q. How far is that steel boom from the standard compass of the "Denali" as shown on that plan?

A. I would have to scale it. This is $\frac{1}{8}$ of an inch to the foot; every $\frac{1}{8}$ of an inch on this plan is equal to a foot.

Q. Can you tell us, please?

A. Not without a ruler. [2688]

Q. Well, here is a ruler.

A. Now, what is your question?

Q. What is the distance from that steel cargo boom to the standard compass of the "Denali", as shown on that plan?

A. You mean the boom in that position?

Q. Just as it is shown on that plan. There is the boom, isn't it (indicating).

(Testimony of E. M. Murphy.)

A. That is correct. And in that position there it is 32 feet to the end of the boom.

Q. What is this object here that is extending in a vertical direction, just vertical of the pilot house?

A. That is a permanent Sampson post, that is never moved. That is built in and sets off to the side in this position. Here is one, and here is the other (indicating). They are known as King posts or Sampson posts. In this particular print it is known as a King post. It is shown here and here (indicating). They are permanent and have been on the ship, of course, since she was built.

Q. And that is a boom extending up at about a 45 degree angle from it?

A. Yes.

Q. That swings around, or up and down, as you desire it?

A. Well, you can hoist it up with this top list, or you can swing it around by the guys.

Q. Those are used in connection with the loading of the cargo, are they not?

A. Yes; loading and discharging.

Mr. Summers: Just for the record, if the Court please; what disposition does the Court wish to make of Claimants' [2689] Exhibit A-8?

The Court: What request is there before the Court?

Mr. Summers: Only to withdraw it, in view of the fact that a duplicate has been introduced as Petitioner's Exhibit No. 65.

(Testimony of E. M. Murphy.)

The Court: Is there any objection to withdrawing it?

Mr. Bogle: Mr. Ryan says it has never been introduced?

Mr. Summers: It has not been. It has only been identified.

Mr. Bogle: Well, I have no objection.

The Court: Claimants' Exhibit No. A-8 is now withdrawn and re-delivered to the counsel for Claimants, the Clerk being no longer responsible therefor.

Mr. Ryan: That is all, Your Honor.

(Claimants' Exhibit No. A-8 withdrawn.)

Q. (By Mr. Bogle) Mr. Murphy, referring to this Petitioner's Exhibit No. 65, the measurements you have taken of the steel boom are on the assumption that it is fore and aft of the ship, and closest to the position of the pilot house, isn't it?

A. Yes. This boom is not carried in that position, but is brailed up against that mast. This is only in that position, or some other equivalent position, when they are loading or discharging. When she is carried she is brailed up against the mast in a vertical position.

Q. Over how much of an arc does that boom swing in loading cargo?

A. Well, it will swing from the dock to amidships, over the [2690] hatch. It may be on either side, depending on which side of the ship you are

(Testimony of E. M. Murphy.)

loading, but ordinarily you would only swing it half the width of the ship, plus part of the dock.

Q. It is up against the mast, as you say, and when it is so carried, how far is it from the standard compass?

A. About 67 feet.

Q. Is that a part of the permanent equipment of the ship?

A. Yes, that is permanent; put on the ship as soon as she was built.

Mr. Bogle: That is all.

The Court: You may be excused.

(Witness excused.)

Mr. Bogle: Now, do they want Mr. Erlands, in order to complete with him? You were waiting for this blueprint in order to examine Mr. Erlands?

The Court: May Capt. Erlands be excused from further appearing as a witness?

Mr. Ryan: He was to be called back when the plans were produced.

The Court: Then he may take the stand. You may now finish your cross examination with respect to this witness, Capt. Erlands.

ERLAND L. ERLANDS,

recalled as a witness on behalf of Petitioner, having been first duly sworn, testified as follows:

Further Cross Examination

By Mr. Ryan: [2691]

Q. What was the diameter of the 12 ton boiler that was on the port side of the forward well deck, near the pilot house of the "Denali", when she sailed in May, 1935?

A. That 8 ton boiler?

Q. The 12 ton boiler, bound for Blue Fox Bay, that you identified or testified to this morning?

A. Well, I could only guess that. It would be around nine feet, I guess.

Q. And it was shored up with dunnage underneath, wasn't it, on the deck?

A. Yes; with cribbings, beddings.

Q. How high was the top of that boiler above the well deck?

A. Oh, I wouldn't say. It would be over seven or eight feet.

Q. You mean the dunnage was seven or eight feet?

A. No; no; the boiler.

Q. I thought you said the diameter of the boiler was nine feet?

A. Yes.

Q. What is the height of the dunnage, in addition to that?

(Testimony of Erland L. Erlands.)

A. Oh, the dunnage we use is generally, oh, 6 by 8, 8 by 8—I don't remember, offhand.

Q. Do you know how high the bottom of the boiler was above the well deck, or not?

A. I should judge six or eight inches.

Q. So the height of the boiler above the deck, that is, the top of the boiler, would be 9 feet, is that right?

A. About 9 feet, yes.

Q. Then this dump truck that was right there in front of the pilot house, what was the height of that? [2692]

A. Well, the tires, they stood right on deck, the rubber tires, and the height of the truck, I would say—oh, about 7 or 8 feet, the cab.

Q. Was that an ordinary steel boiler, that 12 ton boiler?

A. It was a steel boiler, yes.

Q. And the truck was an ordinary steel truck, was it?

A. An ordinary dump truck.

Q. The ordinary steel dump truck, I take it?

A. Yes. I don't remember whether it was steel or wood.

Mr. Long: The testimony was that it was an 8 ton boiler; is that what you refer to? I do not mean to interrupt?

Mr. Ryan: No; I mean a 12 ton boiler.

Q. (By Mr. Ryan) There was another boiler there, an 8 ton boiler, that you testified to. What

(Testimony of Erland L. Erlands.)

was the diameter of that? The boiler that was stowed on the forward well deck, just forward of the pilot house?

A. Well, you referred to the boiler for Blue Fox Bay—

Q. That is the 12 ton boiler, yes. Now, I am referring to the 8 ton boiler.

A. Well, owing to the circumstances I would say, oh, around 6 or 8 feet—6 or 7 feet.

Q. 6 or 7 or 8 feet?

A. Something like that.

Q. And then how high was that shored up, or dunnaged up?

A. The same as the other; the same kind of dunnage.

Q. What was the total weight in tons of the iron or steel cargo that was stowed on deck, forward of the pilot house of the "Denali", when she sailed on this voyage in May, 1935?

A. Well, that I don't know. I never figured it out. [2693]

Q. Well, can you give us that figure by refreshing your memory, or from any papers, or from this cargo plan that you have produced?

A. Well, I could tell practically—those trucks would go about two and one-half tons apiece.

Q. How many trucks were there?

A. Well, four trucks on deck.

Q. Forward of the pilot house?

A. Five; yes, on the forward deck?

(Testimony of Erland L. Erlands.)

Q. Five of them?

A. Yes..

Q. How many boilers were there, steel boilers—two?

A. One 12 and one 8 ton.

Q. What other steel or iron cargo was stowed on the forward deck?

A. I don't remember right now. I think we had either five or six road graders, and they go about, oh, three and one-half to four tons apiece.

Q. They are just ordinary steel road graders, is that it?

A. Yes; what they use on the road.

Q. Those were Government property?

A. Yes. Then there was one 20 ton rock crusher.

Q. Just an ordinary steel rock crusher, is that right?

A. Yes. That was dunnaged on heavy skids.

Q. What other steel or iron cargo was on the forward deck?

A. Then we had an engine. I think, if I ain't mistaken, that was a Diesel engine for Crab Bay, and I believe that one went around 6 or 7 ton.

Q. That was steel, too?

A. That was in a case; that was in a box, all crated in. [2694]

Q. I see.

Q. Then on No. 2 hatch we had a tank for Fairbanks that weighed about two and one-half or three ton before we hoisted it in with a single gear. And

(Testimony of Erland L. Erlands.)

she also had a tank on the forward hatch, the same type of boiler, which was hoisted in with single gear.

Q. Those were just ordinary steel boilers?

A. Tanks.

Q. Tanks; yes.

A. Gasoline tanks, I guess that is what they were going to use them for. Then of course on the port side forward we had from fifteen to eighteen thousand feet of lumber.

Q. I am only interested in the iron or steel.

A. Yes. That is about all there was.

Q. How many tons of steel or iron cargo were there in the forward holds of the "Denali" on this voyage in May, 1935?

A. Well, in the forward hold of the "Denali" it is pretty hard for me to say how many tons it was, because it was collapsed cans, salmon cans. We loaded them at the American Can Company.

Q. What is your best estimate of the amount of tons of those compressed cans that were in the forward holds of the "Denali"? Take the 'tween decks first, the forward 'tween decks. The "Denali" had 'tween decks, didn't she?

A. She had 'tween decks.

Q. And No. 1 'tween deck and No. 2 'tween deck were forward of the pilot house bulkhead, were they not?

A. Yes, sir. [2695]

Q. How many tons of those compressed tin cans, or iron cans, were there in the No. 2 'tween decks?

(Testimony of Erland L. Erlands.)

A. There were none.

Q. How many were there in No. 1 'tween decks?

A. In No. 1 'tween deck there were no cans—it was merchandise, bales.

Q. How many tons of those compressed iron or tin cans were there in No. 2 lower hold?

A. In No. 2 lower hold—

Q. (Interposing) On the "Denali" on this voyage, in May, 1935?

A. That is pretty hard for me to say, how many tons it was. When we were down there to load an order, when we went down there we were ordered to load so many thousand cans, so many thousand cases—and each case I believe is about 300 or more of those collapsed and pressed cans—I believe a case like that weighs around, oh, 75 to 100 pounds, apiece.

Q. How many cases of those compressed iron cans were in No. 2 lower hold?

A. In No. 2 lower hold?—Well, I haven't got that on the cargo plan here—it was between No. 1 and No. 2 lower hold.

Q. It was a very large shipment, wasn't it, on the "Denali"?

A. Yes; in that forward hold, but in the No. 2 lower hold we had bulk coal, and we had a bunch of herring barrels, and then we had cans stowed on top, maybe six or eight thousand cans, I should judge.

Q. How many tons of compressed iron cans were

(Testimony of Erland I. Erlands.)

there in No. 1 and No. 2 lower holds of the "Denali" on this voyage, in [2696] May, 1935?

A. That I couldn't tell you.

Q. Well, you loaded them, didn't you?

A. Yes, but I never figured how many tons of cans would go, because they have that on the regular manifest receipts that they receive from the American Can Company. I never figured that out.

Q. There is some record that your company keeps of that, isn't there?

A. Yes.

Q. What record is that?

A. They have the bills of lading.

Q. Well, they are marked here, I guess, and we can find them.

Mr. Ryan: That is all, Your Honor.

Redirect Examination.

By Mr. Bogle:

Q. Mr. Erlands, these weights that you have given us are merely approximate, aren't they?

A. They are just approximate, a guess. That is all I can do. When the cargo is taken in by the Alaska Steamship Company they have the Traffic Department there, and the checkers, and they take care of the weight and measurement, and that is all put on the bills of lading.

Q. So the weight on the bills of lading would be much more accurate?

A. Oh, that would be accurate.

(Testimony of Erland L. Erlands.)

Q. Now, these cans that you have spoken of, counsel referred to them as iron or tin—what are they—what is the construction of them? [2697]

A. Well, they are regular tin cans, collapsed, salmon cans. In former years they put them up single, and now they compress them to get more in the case.

Mr. Bogle: That is all, Mr. Erlands.

Recross Examination.

By Mr. Ryan:

Q. The "Denali" had a steel boom forward, didn't she?

A. Yes.

Q. What is that steel boom used for, that is, what size and weights?

A. Well, we use it for lifts over 5 tons.

Q. How many lifts over 5 tons did you have forward on that ship?

A. Well, I will have to look at the cargo list.

Q. At any rate, you had some, didn't you?

A. I had some, yes.

The Court: That is all. You may be excused, Captain.

Mr. Bogle: I want to ask him one question.

The Court: You may do so.

Q. (By Mr. Bogle) Was that steel boom stowed above the deck?

A. Yes; we hoisted it up above; we hoisted it up against the mast.

The Court: Well, you may be excused.

(Witness excused.) [2698]

SYLVESTER GLASS,

recalled as a witness on behalf of the Petitioner, having been previously duly sworn, testified as follows:

Further Direct Examination.

By Mr. Bogle:

Q. Capt. Glass, you were drawing these arrows on Petitioner's Exhibit No. 33.

A. Yes, sir.

Q. From your experience what is the direction of the current on a flood tide in the vicinity of Brown Passage?

Mr. Ryan: I think the witness has already testified on that point, Your Honor, and I object to it as repetition.

The Court: I remember the ebb tide, but I do not remember the flood tide. The objection is overruled.

The Witness: The flood tide, coming out of Brown's Passage, Hudson's Bay Passage, practically reverses itself and runs to the eastward, and through these passages.

Q. In other words, it would reverse the arrows "A-B"?

A. Yes.

Q. After you got to the end of Dundas Island, what is the state of the flood tide?

A. To my experience, in the vicinity of Zayas Island, the tides stay on top of Zayas Island, regardless of the direction of the tide.

(Testimony of Sylvester Glass.)

Q. By that you mean what? You say they sit on top of it—what do you mean?

A. Set towards it, set to the left.

The Court: Set to the left, looking northward?

The Witness: Yes, sir; looking to the north.

[2699]

Q. (By Mr. Bogle) Captain, what has been your experience as to the accuracy of the current arrows placed on these charts, or on this chart, No. 2828, Petitioner's Exhibit No. 33, both as to the direction of the current and the predicted strength of the current, both ebb and flood?

Mr. Ryan: It is understood that all of this line of examination is subject to the objection that Mr. Summers and I have made.

Mr. Bogle: I do not know what the objection is.

The Court: I do not recall what the record shows, but whatever it is, the record may so show.

The Witness: Well, from actual experience, I will say that they are not reliable.

Q. (By Mr. Bogle) Do the current tables give you any information on the subject?

A. The current tables do not, but there is an appendix on the chart there which tells you—which is supposed to be the stage of the tide, and the velocity, which is absolutely out of the absolute condition as I have found them there.

Q. What has been your experience as to the period when the ebb starts, or the flood starts, with reference to the contradiction on this chart?

(Testimony of Sylvester Glass.)

A. I would not depend on it.

Q. Is there any regularity as to the commencement of the ebb or the flood current?

A. No, sir. I figure it all depends upon the height of the tide, the weather conditions, the wind on the outside, the influence on the tide.

Q. How far, in your experience, does the actual current, [2700] both ebb and flood, vary from the predictions as to the time?

Mr. Ryan: Objected to unless the circumstances are stated, and they are made to fit the reference to the record.

The Court: The objection is overruled. If you can answer the question, Captain, you may do so.

A. The Witness: I have found if you take the tide table, the prediction time of high or low water, at Port Simpson, which is the reference that they use for all those waters, that sometimes it differs as much as three hours from the prediction time in the tide table.

Q. That is the prediction time of what?

A. Of the height—of the changes of the tides.

Q. Does the three or four hours refer to the current or the height of the tide?

A. The tide tables, to my knowledge, only give you the predicted height of the water, but do not give you the prediction of the time of any current in that vicinity.

Q. What I am getting at, Captain, are the cur-

(Testimony of Sylvester Glass.)

rents; do they coincide with the height of the water in this vicinity?

A. No, sir.

Q. In other words, does the ebb current coincide with the last of the last flood tide, the height of the high water?

A. No, sir.

Q. Capt. Glass, in navigating Southeastern Alaska, and particularly through these waters, Caamano Passage, in what capacity have you acted on board steamships, as master or pilot?

A. As master and pilot, and in the capacity as chief officer. [2701]

Q. What position, as the pilot of those ships—what position does the captain occupy aboard the ship?

A. Well, a pilot is one of the regular crew, that is, one of the watch officers on board that ship, in charge of the navigation on his watch.

Q. Is he a man who is required by the certificate, or is he an extra man?

Mr. Ryan: Just a minute; I object to that as entirely immaterial and irrelevant, as not being connected with the vessels of this company, or with the "Denali", and not under the circumstances shown to have any relevancy at all to this case.

Mr. Summers: And we also object to it as leading.

Mr. Bogle: Yes; it was leading.

(Testimony of Sylvester Glass.)

The Court: Yes; it was leading, and the objection is sustained.

Q. (By Mr. Bogle) Captain, what is the position of the pilot aboard a vessel, with reference to the master of the ship?

Mr. Summers: Just a minute; if Your Honor please; it seems to me that unless he has had experience with the Alaska Steamship Company this witness is not qualified. The articles of the "Denali" are in evidence and they speak for themselves as to the relative positions of the men assigned thereon.

The Court: The objection is overruled.

Mr. Bogle: Will you read the question?

(Last question read.)

Mr. Ryan: May I object further on the ground that the duties of the pilot are defined by his license, and [2702] by the capacity in which he ships, and are defined by the laws of the United States, the regulations of the Department of Commerce, the Steamboat Inspection Service, and are capable of proof by writing, by statute, and this is not subject to change by oral testimony of this sort.

Mr. Bogle: I do not know of any specific writing that you can refer me to, Mr. Ryan. They are not required to be carried, and that is what I am getting at.

The Court: The objection is overruled.

Mr. Ryan: An exception, please.

The Court: Exception allowed.

(Testimony of Sylvester Glass.)

Mr. Bogle: I would like to have the question read. (Question re-read.)

Q. (By Mr. Bogle): Who is the superior officer, that is what I mean?

A. Well, I would say that as far as the navigation duties are concerned, that he is next to the master.

Q. You say "he"; who do you mean?

A. The pilot.

Mr. Ryan: I move to strike the answer.

The Court: The motion is denied.

Q. (By Mr. Bogle) Captain, have you ever navigated Caamano Passage at night?

A. Yes, sir.

Q. Are there similar passages to that in other waters of Southeastern Alaska?

A. We have got many, many of them, that are far worse than that.

Q. In navigating waters of that kind, to what extent do you [2703] depend upon your compass?

Mr. Ryan: That is objected to upon the ground that it calls for the evidence of this witness under different circumstances, not connected with this case.

The Court: The objection is overruled.

Mr. Ryan: Exception.

The Court: Exception allowed.

The Witness: As near as I can see the land, and have my landmarks, it is very little that I use the compass.

(Testimony of Sylvester Glass.)

Q. When you pick up a landmark thereafter, to what extent do you steer a compass course?

A. Well, may I explain that; supposing I was going up in Caamano Passage, going by magnetic course that would lead me to mid-channel, and I tell the quartermaster at that time to put her on that course, which would be about North half, or North $\frac{3}{4}$ West, after watching the way the ship was heading and setting either one side or the other, I would probably give him an order to change the course three or four times; say a right half point, or three-quarters of a point, or something like that—at some time after making those changes, after I went through there, I would inquire of the quartermaster how he was heading, just to see the difference, the drift of the ship between courses, what she should have made, and what she was actually making.

Mr. Summers: I move to strike that answer as not responsive, and not material as to what this witness would do under other circumstances.

The Court: The motion is denied.

Q. In taking a course through a narrow passage, assuming that [2704] you have to change, make changes in order to offset the set of the current, or for other causes, in order to make your original course good, is it customary with Alaska pilots and Alaska navigators to enter those changes in the log book?

Mr. Summers: Just a minute; I submit, if Your Honor please, that this is improper and incompetent

(Testimony of Sylvester Glass.)

to prove local custom with reference to this particular company, and in violation of the obligation of masters and pilots, as recognized by the courts.

The Court: Objection overruled.

The Witness: No; it is not. However, if the vessel showed a decided trend to run to one side, then we would generally make a note on the margin of the log book to the effect that the vessel set one way or the other.

Q. (By Mr. Bogle) When do you make that note?

Mr. Ryan: Just let him answer?

Q. Go ahead; I am perfectly willing, if you have anything more to say, Captain.

A. No; that is it.

Q. When did you make that note?

A. Oh, generally, as I get through any of those narrow passages, and make certain that the set would be one way, because she is liable to set the other way as we go along.

Q. How long did you operate out of the Port of Seattle as an officer and master?

A. I got my first command in 1920.

Q. With what regularity have you operated out of the Port of Seattle since 1920, as a master?

A. Sailing out of here continuously. [2705]

Q. Do you know the custom of this port—that is, the Port of Seattle, with reference to compass adjusting?

A. I know the custom that has been followed by the different companies that I have worked for.

(Testimony of Sylvester Glass.)

Q. What is that custom?

A. Why, when I thought that my compasses needed adjusting, I notified my superintendent to that effect and I would have them adjusted.

Q. Do you know of any custom in this port of having compasses adjusted at any periodic regularly stated time?

A. I have never heard of it.

Q. How many years, or for what period of time were you with the Northland Transportation Company?

A. I was there about two years.

Q. During what years?

A. I just left there—I believe it was—I left the Northland Steamship Company this March, I believe—1937.

Q. And were you with that company for two years prior to 1937?

A. Yes, sir, about two years.

Q. What was the custom of the Northland Transportation Company with reference to compass adjustments during the period that you were with them?

A. Why, I requested adjustments—the master requested adjustments if he thought that they were necessary.

Q. In your experience is a period of twenty-two months an unusual period between compass adjustments?

(Testimony of Sylvester Glass.)

A. No, sir.

Q. Now, as a master under what circumstances would you deem [2706] it necessary to have your vessel swung and your compasses adjusted by a shore adjuster?

A. Well, if I noticed that my compasses have acquired an unusual error, or an excessive error, or were sluggish, why, then, I would request to have my compasses adjusted.

Q. And what degree of error would you consider excessive?

A. Well, by excessive I would say six degrees. If I got over six degrees error, I would say that that was excessive.

Q. Do you mean with or without cargo?

A. Without cargo, because the compass would change after the cargo was loaded anyway, if it was adjusted before.

Q. Captain, assuming a steamship lying alongside the West Seattle Dock, which has a heading of West Northwest, took cross bearings of the Smith Tower and the water tank at Queen Anne Hill and checked the compasses; and then on a magnetic course from West Seattle Dock to Arden Salt Dock, Northeast by North $\frac{1}{2}$ North, she checked her compass while running that course; and then while lying alongside the Arden Salt Dock with a known heading of East Northeast she checked her compass on that heading with that known heading; and then from the Arden Salt Dock to Pier 40 she set a

(Testimony of Sylvester Glass.)

magnetic course West by North $\frac{1}{2}$ North and checked her compass while running that magnetic course; and that while alongside of Pier 40 on a known heading of North Northwest Magnetic she checked her compass; and then from Pier 40 to the American Can Dock, on a course approximately East by South Magnetic she again checked her compass on that course; and then heading from a known heading [2707] of the American Can Company's Dock of East Northeast she checked her compass while lying alongside; then on the course from the American Can Company's Dock to the Pacific Coast Coal bunkers of Southeast by East Magnetic she again checked her compass; and checked her compass while lying alongside of the Pacific Coast Coal bunkers on the known heading of West Southwest, and then checked her compass alongside the General Petroleum Corporation on a known heading of South Southeast, and checked her compass alongside Pier 2 on her heading of East Northeast, and that on these various checks and bearings no error was found in excess of two degrees error; as a master mariner state whether or not those compasses should have been compensated by a shore adjuster.

A. If I was master of that vessel I would not request it. I would not think it was necessary.

Q. Now, in your judgment, what would you say as to the condition of that compass as a result of those checks?

(Testimony of Sylvester Glass.)

A. I would say that any compass that does not show any more than two degrees deviation on it is in pretty good working order—in pretty good shape.

Q. What would you say—would you say that it was sufficient for the voyage to Alaska?

A. He has checked her on nearly all the courses that he would use going to Alaska, so that if she didn't check over two degrees error she was perfectly all right.

Q. Now, Captain, assuming that after these checks had been made that there was loaded on board, on the well deck of the "Denali", various cargo, such as trucks, boilers, [2708] rock crushers, and so forth, with magnetic tendencies of either iron or steel, in what way in your judgment could a competent mariner or master of that ship determine the effect of that cargo upon his compasses?

A. Well, if the sun is visible and is out, he would certainly take azimuths to determine his error.

Q. Assuming that after that cargo was loaded and while lying off West Point loading powder, the ship was swung on fourteen points from West Southwest to Northeast, and azimuths taken on each point, and there was no deviation from West Southwest to North exceeding half a degree, and that the extreme deviation on Northeast was two degrees, with the cargo aboard, in your judgment was the vessel's compasses in proper condition for the contemplated voyage to Alaska?

(Testimony of Sylvester Glass.)

A. Yes, sir.

Q. Now, Captain, if, during the course of the voyage, you determine your actual error, and that is known, what degree of error would you say in the compass or deviation would be dangerous?

A. I would not call any error of a compass dangerous as long as it was known to me and I applied it.

Q. Well, if you knew the error, taking azimuths on your standard compass, how do you determine the error on your steering compass?

A. By comparison to the standard compass; that is, I would go up there and take a bearing of the standard compass and note the heading of the standard compass at the time that the bearing is taken, and at the same time check and see what the steering compass reads at that time, [2709] and the difference between the two would give you the deviation of your steering compass.

Q. In what way do you compare the two compasses during the course of the voyage?

A. It is always the standing rule—the standing rule is on pretty clearly every vessel that I have been on that the compasses must be compared at least every two hours. That is, the officer on watch goes up to the standard compass and sees what the heading is, and then when he gets to the course that is desirable to steer by the standard compass he sings out through the speaking tube, “Right on; right on; right on”, until the man at the wheel

(Testimony of Sylvester Glass.)

gets what the course should be on the steering compass.

Q. Is there any universal practice as to which compass the ship is steered by?

A. There is only one compass that the ship is steered by, and that is the standard compass.

Q. Why is that?

A. The standard compass is the highest point on the vessel, and it is supposed to be away from all magnetic influences as much as it possibly can be, and it is made so that it is the most correct compass.

Q. Captain, in your experience is the difference of one-eighth to a quarter of a point between your standard compass and your steering compass unusual?

A. Unusual?

Q. Yes.

A. No, sir. No, sir.

Mr. Bogle: I think that is all. [2710]

Cross Examination

By Mr. Ryan:

Q. On what date were you last through Caamano Passage?

A. Sir?

Q. On what ship. On what ship were you last through Caamano Passage?

A. My last ship?

Q. Yes.

(Testimony of Sylvester Glass.)

A. The last ship was this April on the "Vigilant". I believe that was in April.

Q. In April.

A. Yes.

Q. Now, prior to May 19, 1935, when was the last time that you were through Caamano Passage?

A. Well, I would have to check that up. I cannot stay here and tell the dates offhanded.

Q. Can't you give us that within five years or ten years of the time that you were through there?

A. Well, I was running——

Q. (Interposing) Prior to May, 1935.

A. Yes. I was steady on the run from 1920 to 1926. I was running to Alaska at all times during that time, and for those six years I was going up there steady. Now, you just want the——

Q. (Interposing) So the nearest you can give us then is the year 1926, is that right?

A. Well, just the last two years I was running to Alaska. I was running the last two years to Alaska continuously.

Q. I mean before the stranding, in May, 1935, when was the last time that you were through Caamano Passage, and on [2711] what ship and on what date?

A. Well, I will have to get my book in order to tell you that. I cannot tell you that offhand.

Q. Where is your book?

(Testimony of Sylvester Glass.)

A. It is at home. It gives the list of the ships that I was on and where we were at all times.

Q. I wish you would bring the book into court next week. Will you do that?

A. Yes.

Q. Do you know the name of the ship that you were last on through Caamano Passage before this stranding in May, 1935?

A. Yes, sir. The last time I was through there I was on a Standard Oil tanker—the “Richmond”—I was pilot on her.

Q. Weren't you on a tug, or barge?

A. That was last April—this April, I mean.

Q. What was the name of that tug?

A. The “Vigilant”.

Q. You had the barge on a hawser tow, did you not?

A. Yes.

Q. How long a length of hawser was there between the tug and the barge?

A. I couldn't tell you the exact length. At that time going through there I believe that we shortened it up—probably 300 feet of hawser line.

Q. Now, don't guess at it. If you don't know how much it was, just say so.

A. Well, I don't know the exact amount of hawser.

Q. What is the usual length of hawser that you have between [2712] a tug and the barge, of that

(Testimony of Sylvester Glass.)

type, going through Hecate Straits and Caamano Passage?

A. Well, it all depends on the weather conditions.

Q. Well, you don't know. That is your answer, is that right?

A. It depends on the weather conditions——

Q. (Interposing) I see.

A. (Continuing) —as to how much hawser I would give her.

Q. Well, you never ran on this reef, did you, Captain?

A. No.

Q. On which the "Denali" stranded?

A. No, sir.

Q. Why didn't you run on that reef?

A. Because probably I didn't get in the same shape that this other man was.

Q. But you managed to keep clear of it all right, didn't you?

A. With the grace of the Lord, I suppose I did.

Q. How was it that you happened to keep clear?

A. Well, probably by having more experience and knowing the set of the currents and watching out for them.

Q. You think that you had more experience than Captain Obert, do you?

A. I might have, in that locality, yes, sir.

Q. Yes. You don't know anything about that particular point, do you, Captain?

(Testimony of Sylvester Glass.)

A. Which particular point?

Q. How much experience Captain Obert had going through that passage?

A. No. I don't know anything about Captain Obert whatsoever. [2713]

Q. Anyway, you went through there at night and you had no trouble at all?

A. Yes, sir.

Q. How many times did you go through there at night and have no trouble at all?

A. Oh, well, I cannot take any period—I cannot remember just exactly anything like that. I cannot enumerate it to you.

Q. Now, these arrows that you have put on this chart 2828, Petitioner's Exhibit 33, showing the direction of the tidal currents, they run practically west true from Dundas Island to Zayas, between those two islands, do they not?

A. Yes, sir.

Q. What is their direction magnetic?

A. Well, I don't know what the direction is. I am just saying that the direction of the current has always set me on top of Zayas Island.

Q. Please answer the question.

A. In the direction——

Q. (Interposing) Do you understand the question?

A. You asked me what the true direction of these arrows are, didn't you?

(Testimony of Sylvester Glass.)

Q. No, I didn't ask you anything of the sort. I asked you what the magnetic direction of those arrows is that you put on this chart, indicating the direction of the currents between Dundas Island and Zayas Island.

A. Well, the magnetic direction would be about West by South—West Southwest.

Q. I see. You don't know what the variation is up in that [2714] locality, is that it?

A. Sure. Here it is, right here, sir (indicating on chart).

Q. What is it? Look at that chart and read it.

A. Sir?

Q. What is it as shown on that chart?

A. It is 29 degrees eastward.

Q. Is that chart wrong in that respect, too?

A. In the variation?

Q. Yes.

A. No, sir.

Q. You say that the current sets just the same like that right straight west true from Dundas Island to Zayas at all stages of the tide—flood, ebb and all the tides, is that right?

A. That is what I have found in my experience running through there.

Q. Is there a tunnel underneath Zayas Island for that water to come through and go over like that?

A. Well, you may know more about that than I do.

(Testimony of Sylvester Glass.)

Q. Well, is there a tunnel for that water to come through there?

A. I don't know.

Q. Is it your idea that the water goes under Dundas Island and runs right over straight through?

A. Did you ever take any—

Q. (Interposing) Is that your idea, that the water goes under Zayas Island?

A. Oh, no. That is out of the question.

Q. I see.

Mr. Long: I think the witness should be allowed to [2715] finish his answer.

The Court: Objection overruled. Proceed.

Q. (By Mr. Ryan) Well, how do you account for this strange phenomena that at all stages of the flood and of the ebb tide the current sets practically exactly west true from this great big island right straight across to that little island?

A. It is probably caused by eddies, being caused by the tide, by hitting the land and curving around there.

Q. Well, if it hit the land it would go up north as it was coming in and it would go down south as it was coming out, wouldn't it?

A. I know the land there.

Q. Yes.

A. And if the flood tide would happen to come in—out of the sea here (indicating on chart) and hit Dundas Island, there might be such a thing as it would have a tendency to turn right around and

(Testimony of Sylvester Glass.)

form an eddy here (indicating) and wash back the other way.

Q. I see. Is that your idea as to how the flood tide comes in there?

A. I am not giving you any idea, Mr. Ryan. All I know is what I am telling you what I found in my experience on going through Caamano Passage.

Q. Now, let us take this last time that you went through Caamano Passage, prior to May, 1935, what was the stage of the tide, and what tide was it?

A. Well, you would have to get the log book off of the ship that I was on in order to find that out. I cannot remember the stage of the tide for that period of time. [2716]

Q. You don't remember?

A. No, sir.

Q. Do you remember what the height of the tide was?

A. No.

Q. Do you remember what the high water was at Port Simpson at that time?

A. No, sir.

Q. Or at Prince Rupert?

A. No, sir.

Q. Or at Ketchikan?

A. No, sir.

Q. Or at Barren Island?

A. No, sir.

Q. You don't pay any attention to tide tables, do you?

(Testimony of Sylvester Glass.)

A. Absolutely I do.

Q. Well, I thought you said that the tide tables were wrong up there.

A. I take the approximate time from the tide tables, but I certainly would not rely on them absolutely.

Q. What is the purpose of taking the time from the tide tables if you are not going to rely on them at all?

A. Well, you take the approximate time.

Q. So you do rely on the tide tables, don't you?

A. Just for the approximate time, that is all, sir.

Q. And you do rely on the currents and directions as computed on the diagram 2828 and on the British Admiralty Chart 1737, do you not?

A. Not altogether.

Q. But you do in large part?

A. No. I look at them for reference and then figure out [2717] what is going to happen by watching the ship—which way she sets.

Q. Now, all of this water along here (indicating on chart) is part of Dixon's Entrance, and it is one great big body of water, isn't it?

A. Yes, sir.

Q. And this shore formation is all flooded valleys on this west side of this range of mountains there, isn't it (indicating on chart)?

A. Yes, sir; I believe so.

Q. There is not any river of any consequence

(Testimony of Sylvester Glass.)

anywhere along there running in there through Portland Inlet or anywhere down the coast?

A. Well, you have got a long ways there from Portland Inlet.

Q. Well, you do not have any streams running in there of any consequence, do you?

A. No; no rivers.

Q. They are just flooded valleys with the peaks of the mountains left up there on the west side of the mountain range running up and down the coast, isn't that so?

A. Well, probably.

Q. Well, in a general way that is the topography up there, isn't it?

A. Well, yes.

Q. So that when the flood tide comes in through Dixon's Entrance, one-half of it goes around Rose Spit and down Hecate Straits, and the other half comes right up through all this great sea or single body of water with just some islands in it, isn't that so? [2718]

A. Yes, sir.

Q. And one of the smallest of those islands is Zayas Island—I mean of any consequence; isn't that right?

A. Yes, sir.

Q. And on this Dundas Island—the west side of it—the formation is fairly rocky, is it not—I mean in a general direction—it is much more nearly a straight line than, for instance, the eastern shore

(Testimony of Sylvester Glass.)
of Dundas?

A. Well, what do you mean by "straight"?
There are no outlying rocks there?

Q. No, no, I don't mean a few outlying rocks. I
mean the general formation of the coast on the west
shore of Dundas Island is almost a straight line,
isn't it?

A. Yes, sir.

The Court: At this time we will take an adjourn-
ment of this case until next Tuesday at ten o'clock
in the forenoon.

Mr. Ryan: May I ask if counsel still feels that
he will finish his case on Tuesday? I am asking that
in order to get my case in compact shape.

The Court: Probably it would be best for you to
arrange for the attendance of some of your wit-
nesses at that time.

Mr. Ryan: Yes, but I was wondering whether
counsel still felt that he would finish on Tuesday.

The Court: If counsel can state concerning that,
he may do so.

Mr. Bogle: The way that the examination has
been going along today, there is not any possibility
of [2719] finishing my part of the case, on Tuesday,
and I doubt whether I will be able to finish it on
Wednesday. I have five more witnesses to call.

Mr. Summers: If counsel could indicate the num-
ber of witnesses that he intends to call we might
make our own estimate—that is, if he would tell us

(Testimony of Sylvester Glass.)

the number of additional witnesses he intends to put on the stand.

Mr. Bogle: Well, we will be all day Tuesday, and part of Wednesday.

The Court: All right.

(Whereupon an adjournment was taken at 4:30 o'clock P. M., November 12, 1937, to 10:00 o'clock A. M., November 16, 1937.) [2720]

November 16, 1937,
10:10 o'clock A. M.

Court convened pursuant to adjournment;
All parties present.

The Court: Are there any other ex parte matters to come before the Court? If not, you may proceed with the case on trial. Was there a witness on the stand whose testimony has not been completed?

Mr. Bogle: Yes, Your Honor. Captain Glass.

The Court: Will you recall that witness?

Mr. Bogle: Yes. Captain Glass, come forward.

The Court: Resume the stand, Captain.

SYLVESTER GLASS,

resumed the stand for further examination.

Further Cross Examination

By Mr. Ryan:

Q. For what ports on the west side of Prince Wales Island were you bound on your voyages that you made up through Caamano Passage?

(Testimony of Sylvester Glass.)

A. Waterfall, Klawack, Craig, Heideberg, and then we used to go up through Chatham Straits to all the salteries.

Q. Now, you were up there two seasons, you say?

A. Yes, sir.

Q. And the port that you would leave would be what—before you went through Brown's Passage?

A. I used to come up from Seattle.

Q. And then you would go up and turn west through Brown's Passage? [2721]

A. Yes, sir.

Q. And then where would you go?

A. Go through Skookenchuck.

Q. You would go in through Caamano Passage?

A. Yes, sir.

Q. And then would turn westward to Prince Wales Island?

A. A little to the westward—to the northwards and to the westwards.

Q. I show you this chart, Claimants' Exhibit A-10, 8102, and I will ask you how you would go on the voyages after you turned westward through Brown's Passage.

A. I would go through Brown's Passage, come up here (indicating) and go through Caamano Passage, go right up, and inside.

Q. You would turn west?

A. Yes, sir.

Q. And run how far to what port?

(Testimony of Sylvester Glass.)

A. The first port that we generally used to run to would be Waterfall. I don't know whether you can pick it up on this chart or not.

Q. Prince of Wales Island is on the extreme left hand side of this chart, isn't it?

A. Yes, sir.

Q. So Waterfall would be off of this chart to the westward, wouldn't it?

A. Yes, sir. It is up further than that—further over than that. It does not show on there.

Mr. Ryan: Now, I would like to have Your Honor notice that. He would come up this way, right through here, and then come up here and then go over here [2722] (indicating on chart).

Q. (By Mr. Ryan) It is much longer for you to go to your ports on the west coast of Prince of Wales Island, isn't it, going that way than coming straight west from Brown's Passage over?

A. It is longer, but it is not safer.

Q. So you went over through Caamano Passage from Brown's Passage because it was safer?

A. Yes, sir.

Q. You think it is safer to go up that way than it is to go right straight through Dixon's Entrance here (indicating on chart) right straight westward until you get over to the west side of Prince of Wales Island?

A. I do.

Q. Whether it is night time or not?

A. Yes, sir, as long as it is clear.

(Testimony of Sylvester Glass.)

Q. How many extra miles did you travel in making such a voyage as you have described—that is, you come west through Brown's Passage, then you head way up north, or a little to the eastward and north, and then you head back west again after you get up near Cape Fox or Tree Point?

A. About ten miles.

Q. It is about thirty miles or more, isn't it?

A. No, sir, it is not. It is about ten miles.

Q. Well, will you look at the chart and show me how you make that any less than thirty miles?

A. The only distance that you make going through Caamano Passage is the angle that you make up here to here (indicating on chart), which I would have to come up anyway. [2723] I come up around about three miles around the island here and——

Q. (Interposing) Just a minute. I will hand you another chart.

Mr. Long: Go ahead and finish your answer.

Q. (By Mr. Ryan) Lay down on this clean new chart which I show you——

The Court: (Interposing) Let him finish his answer.

Mr. Long: What island is that that you were pointing to when you said, "around the island here"?

The Witness: Prince Lebo Island.

Mr. Long: Mention the geographical places as you go along, Captain.

(Testimony of Sylvester Glass.)

Mr. Ryan: Please, now, Mr. Long——

The Court: (Interposing) Just make your objection, Mr. Long, and no comments.

Mr. Ryan: I think there should not be any interruptions. In fairness to my cross examination there should not be any interruption and designating the places that he is pointing to.

The Court: Proceed.

The Witness: You go up through Caamano Passage around Zayas Island out a distance of about a mile and a half and steer right across for Cape Chacon.

Q. (By Mr. Ryan) What course would that be on?

A. I would have to get a pair of parallel rulers to lay it out.

The Court: Approximately. Approximate it. That will do. [2724]

A. Approximately it would be around West Northwest, or something like that.

Q. (By Mr. Ryan) I asked you to lay down on this new Chart 8102 which I will ask to have marked as the next number for identification on behalf of the claimants.

The Court: That will be Claimants' A-14 for identification.

(Map marked for identification as Claimants' Exhibit A-14.)

Q. (By Mr. Ryan) The course that you say that you followed in proceeding on all these voyages

(Testimony of Sylvester Glass.)

that you made to the ports on the west coast of Prince of Wales Island, and you can lay it down over here on the table, if you wish.

The Court: But be as prompt as you can, so as to expedite the proceedings.

A. If it is a matter of questioning my integrity there is absolute proof as to the way that I went on the log books that are on the ships at the present time. They can be brought up here and they will verify that I went through there during all those voyages that I was on on those ships. The log books are on board the "Culburria" and the "Sea Breeze".

Mr. Ryan: I ask that the answer be stricken as not responsive.

The Court: It is so ordered.

Mr. Long: I want to object to all of this as being wholly immaterial, and being purely a collateral matter, and if there is any attempt to prove that this witness did not go through there, it can be done by other means. [2725]

The Court: The objection is overruled.

Q. (By Mr. Ryan) Come over here, and lay it down on the chart.

The Court: The Court will allow you ten minutes, Mr. Ryan, for this method of examination, after which you may resume oral examination.

Q. (By Mr. Ryan) Just lay it down on the chart, and I wish you would hurry, as we are very short of time.

(Testimony of Sylvester Glass.)

(Mr. Ryan and the witness go over to chart, Claimants' Exhibit A-14 on table)

A. I want to have some parallel rulers.

Q. We haven't got any parallel rulers this morning. Just tell us on the chart. Lay it out on the chart.

A. I would come out here (indicating on Claimants' Exhibit A-14 for identification).

Q. Just draw a line showing the course you took.

A. I used to come out here a distance of about two and a half or three miles off of Prince Lebo, and then go up through Caamano Passage here (indicating), and after you got to this point of Caamano Passage abeam (indicating), we generally used to run ten miles for what we used to call "position" and then straighten it out here for Barren Island (indicating) to pick it up in case of a fog or getting caught up there, and then steering right down for position off of Cape Chacon and inside of Nunez Rocks, and then followed this right along here (indicating) and then go up (indicating).

Mr. Ryan: The witness has drawn on the chart a line in pencil extending through Brown's Passage and up Caamano Passage, and past Barren Island and Cape Chacon, [2726] and up on the west side of Prince of Wales Island.

The Court: By free hand?

Mr. Ryan: By free hand, yes, Your Honor.

(Testimony of Sylvester Glass.)

Q. (By Mr. Ryan) Is that approximately your usual course through Caamano Passage?

A. Well, it is approximately that as long as I can see, surely.

Q. That is, you would go through mid-channel?

A. Yes, sir.

Q. You would not favor the west coast of Dundas Island?

A. Not necessarily. As long as my vessel looked to be in mid-channel I thought it would be safe to go through there.

Q. There is much less current over on the west coast of Dundas Island, isn't there? In fact, it is inappreciable, isn't that right?

A. I don't know whether it is inappreciable or not, but as I said before in all my experiences I found a current through Caamano Passage.

Q. Well, isn't there less current right near Dundas Island than anywhere else?

A. I don't know about that.

Q. You have never been over there, is that it?

A. No, sir. I always—I used always to go through mid-channel. That is always my usual course.

Q. And you were not expecting much of a westerly current when you were going through?

A. Well, I am watching my ship, and I am piloting, and if she is setting her over I naturally would draw back.

(Testimony of Sylvester Glass.)

Q. On a dark night would you pursue that course that you have [2727] laid down there?

A. As long as I saw the land, I would.

Q. Suppose you didn't see Prince Lebo Island, then what would you do?

A. I wouldn't go through there.

Q. You testified that you went through there on some dark nights.

A. Yes, sir. As long as I see the land I will go through any place in Alaska, as long as I see the land.

Q. Lay down a course that you would pursue if it was in the night time.

A. It would probably be the same course as I have laid down there at the present time.

Q. What course would you generally pursue going through Brown's Passage until you began to make the turn up through Caamano Passage?

A. I would try to get her in a position of two and a half or three miles off of Prince Lebo Island and then start up.

Q. Wouldn't you set a compass course or a magnetic course?

A. I would give a course for the quartermaster to steer by, and then watch the ship.

Q. What magnetic course would you give going through Brown's Passage to the point where you turn up to go through Caamano Passage?

A. I cannot remember all of those courses.

(Testimony of Sylvester Glass.)

Q. Well, what course would you use going through Caamano Passage?

A. I would not use any course. I would con the ship. I would be piloting the ship. [2728]

Q. What landmark is there on Zayas Island on which you could take a bearing?

A. The point of Zayas Island—that would be about—the southeast point here is very prominent (indicating on chart).

Q. That would be the southern end of Zayas Island?

A. Yes, sir. That is very prominent. It cuts off at a very sharp angle. It looks as though it is a point with nothing else behind it.

Q. When you would sight that landmark and you could recognize it and take a bearing on it, then you would use that?

A. Not necessarily. I would keep watch on Dundas Island at the same time to see how the ship was laying?

Q. What landmark is a recognized landmark on Dundas Island?

A. There is no recognized landmark. This chart—you have got to realize that when you are going through there the actual way that we look to see the land is altogether different than it is here on this chart. For instance, on this chart—up there it does not show any of this broken line that is here (indicating). Dundas Island, when you come up on this track is practically a straight line.

(Testimony of Sylvester Glass.)

Q. The west side of Dundas Island is practically a straight line, is that right?

A. Yes, sir. Of course, there are these outlying dangers here (indicating on chart), but as long as you are a mile off of there you are clear of everything for that matter.

Q. How much longer is that line or course that you have [2729] drawn there as the one that you pursued in excess of the line which would go from Brown's Passage straight across through Dixon's Entrance between Rose Spit and Celestial Reef and up here to Cape Muson or Cape Chacon?

A. Well, you don't go up—

Q. (Interposing) The question is, what is the excess distance involved there?

A. I cannot tell you by looking at it.

Q. Can you not look at the chart and tell me?

A. No, but I can measure it for you, but I wish to state in my answer that—

Q. (Interposing) Then measure it, will you?

Mr. Long: I submit that the witness should be allowed to finish his answer.

The Court: Yes, finish your answer if you have not finished it.

A. I wish to state in my answer, that in all my experience or anybody's running up there—running to Alaska—I think anybody would be very foolish to start going across Dixon's Entrance from Brown's Passage into the entrance there to the west coast of Prince of Wales Island inside. In the first

(Testimony of Sylvester Glass.)

place the current and everything like that is unknown and you have absolutely nothing here to pick yourself up by on all these outlying dangers that are not marked here.

Q. Aren't there lights here on Rose Spit, and on Overfall Shoal, and Wiah Point, and Masset Harbor and Klashwin Point on the north coast of Graham Island?

A. Well, there are——

Q. (Interposing) Just answer that question by yes or no. [2730]

A. There are lights there, but I would not use them.

Q. There are aids to navigation there, are there not?

A. There are lights there, but I would not use them.

Q. There is no danger in your opinion in going through Brown's Passage and then going between Rose Spit and Celestial Reef westward to the main fairway of Dixon's Entrance?

A. No danger?

Q. Or do you think that it is dangerous?

A. Yes, sir, it is dangerous.

Q. You think that the course right through Brown's Passage to the west, right straight to the fairway of Dixon's Entrance is dangerous?

A. Yes, sir.

Q. Take the stand again, please. When does the tidal stream or current turn between Dundas Is-

(Testimony of Sylvester Glass.)

land and Cape Fox with reference to, say, Prince Rupert?

A. Well, all the way——

Q. (Interposing) With reference to the time of high water at Prince Rupert.

A. All the way from three to five hours.

Q. Do you know what the current or the tidal stream between Dundas Island and Cape Fox was on the morning of May 19, 1935, at 2:44 A. M.?

A. I cannot remember that far back. I can tell you if I look at the current table or at the tide table.

Q. Oh, you take your information from the current table, or from the tide table, is that right?

A. For the approximate time, yes, sir.

Q. Have you any other experience or source that you can take [2731] your information from?

A. Well, the current tables. It also shows it to you at the bottom of the chart.

Q. Now, before we have been talking about tide tables. What do the tide tables show?

A. They show the time of the high and low water.

Q. And what do the current tables show?

A. They show you the velocity and the direction of the currents.

Q. Now, the current tables are accurate, are they not, the Pacific Coast Current Tables, North American and Philippine Islands, for the year 1935?

(Testimony of Sylvester Glass.)

A. Approximately, yes, sir.

Q. It is the tide tables that you say are wrong, is that right?

A. All these publications, as I say, the time on them is approximate.

Q. Well, tell me any place in this current Pacific Current Table that is wrong—that is, in the vicinity of Caamano Passage or Dixon's Entrance. Point it out to me.

A. You are trying to make me say that they are wrong. I am telling you that those times are approximate, and I can prove to you that I can give you any position in those current tables and also on the chart, and in the Canadian Tide Tables for the same place, and there will be a difference of as much as an hour between these three books.

Q. Do you say that these Pacific Current Tables issued in the year 1935 by the United States Department of Commerce are wrong?

A. I say that they are approximate. [2732]

Q. Do you say that they are wrong?

A. No, sir; I say that they are approximate.

Q. Do you say that the American Tide Tables issued by the United States Government are wrong in any respect with reference to Dixon's Entrance or Caamano Passage?

A. I say that the time stated in them is approximate. [2733]

Q. (By Mr. Ryan) Do you say they are wrong in any respect?

(Testimony of Sylvester Glass.)

A. I won't say they are wrong. I say the time is approximate.

Q. When are they right and when are they wrong?

A. If I was in that position that these current tables are given at the same time, under the same weather conditions, and everything else, they probably would coincide perfectly, but any other time they do not coincide, as they only give approximate time.

Q. So that the Pacific Coast current tables for the year 1935 and the American tide tables for the year 1935 are correct, in your opinion, excepting in instances where there is an extraordinary and unpredicted height of tide, or in instances where there have been strong winds or weather conditions preceding the time involved, isn't that right?

A. Well——

Q. (Interposing) Answer yes or no to that, please.

A. I cannot answer that. If you allow me to answer it in my own way——

Q. (Interposing) Answer it yes or no, and then explain.

A. No; I wouldn't say they are right. In my case I would never rely absolutely on either the current or the tide tables. I would naturally look at them for the approximate time of any change of tide, or the strength and direction of the current.

Q. You testified on direct examination that the

(Testimony of Sylvester Glass.)

tidal current was irregular because the height of tide might not be the same?

A. Surely.

Q. As shown in the predicted tables? [2734]

A. Yes.

Q. And that the weather conditions or wind conditions might be stronger?

A. They would have an effect.

Q. Those are the reasons you gave?

A. Yes.

Q. Those are the causes of irregularities or abnormalities?

A. Yes.

Q. If those did not exist, then you would rely on the Pacific Coast current tables and the American tide tables, wouldn't you, in Caamano Passage?

A. Yes, sir. If I knew what the conditions were at the time that these observations were made, and I was there under the same conditions, then I would rely on those current tables, absolutely.

Q. Just to take a theoretical case; suppose in a given situation the actual tide that occurred would be exactly the same height as predicted in the tide tables?

A. Yes, sir.

Q. And suppose further that the wind conditions for some time before the stranding were very mild, then you know of no conditions which could cause irregularities such that you would disregard the

(Testimony of Sylvester Glass.)

Pacific Coast current tables and American tide tables, isn't that so?

A. You say if there weren't any unusual conditions?

Q. Yes.

A. I probably would.

Q. All right. When does the tidal stream or current turn between Rose Spit and Over Falls Shoal with reference, say, to the time of high water on shore, or at Prince [2735] Rupert?

A. I couldn't tell you, because my experience with Rose Spit has been very limited. I am not acquainted around Rose Spit. I have never had occasion to go that way.

Q. What is the strength of the flood current in the southern entrance of Hudson Bay Passage, that is, of the tidal stream?

A. In Hudson Bay Passage?

Q. Yes, sir.

A. We never use Hudson Bay Passage.

Q. At the southern entrance.

A. I wouldn't know, because we never use that; nobody ever uses that passage.

Q. What is the strength of the ebb tide in the southern entrance of Hudson Bay Passage?

A. I don't know, as I never used that passage. Nobody else does.

Q. What is the strength of the flood tide in Brown Passage?

A. The flood?

(Testimony of Sylvester Glass.)

Q. Yes.

A. The flood will run there from one to three miles an hour.

Q. What is the strength of the ebb tide in Brown Passage, if you know?

A. From three to five knots an hour.

Q. Have you ever stopped your engines there, in Brown Passage?

A. No, sir.

Q. Have you ever made any observations there, other than merely to travel through with your ship, piloting, as you have [2736] described it?

A. Yes, sir; I have made observations.

Q. All right; have you stopped to make any observations?

A. No, sir.

Q. You were piloting through there, were you not?

A. Yes, sir.

Q. Now, if you were going out through Brown Passage, and then going up through Caamano Passage, and you couldn't see Prince Lebo Island, and you couldn't see this landmark that you have pointed out on Zayas Island, that is, this southern end, sufficiently clearly to take a bearing on it, and it was a dark night, what would you do?

A. I would run as far as I deemed it safe to go, and then stop and not go through.

Q. That is, you would run by dead reckoning, or your compass course, as far as you could, until you

(Testimony of Sylvester Glass.)

could pick up a recognized landmark, wouldn't you?

A. I would run by time.

Q. That is right; time and a set compass course?

A. Oh, absolutely.

Q. Until you could see this landmark on Zayas Island, that is, the southern end, sufficiently clear to enable you to take a bearing on it, isn't that correct?

A. I would run as long as I thought it was safe enough to run to pick it up. If I couldn't pick it up in a given time, or I thought it was unsafe, I would stop and turn around, and wouldn't go through.

Q. You would either stop or continue on a regular compass course or dead reckoning course, isn't that correct?

A. May I explain that?—That I would only use the course [2737] for the quartermaster to steer by. He has to have something to steer by, naturally, to keep the ship on a straight course. But I would be keeping on lookout and conning the vessel by the sighted land when I would see it.

Q. When you went through Caamano Passage did you go through on a set compass course or not?

A. No, sir; I used to haul her quite often, one way or the other.

Q. You wouldn't take bearings on any lights or things like that to set your course so you would have a dead reckoning course, is that right?

(Testimony of Sylvester Glass.)

A. Well, there wouldn't be any dead reckoning course. I would know what the course would be by laying it off on the chart, but that doesn't signify that I would use that course.

Q. Don't you know that no chart is of any possible use unless you know your exact compass direction at the time?

A. Well, there is lots of places in Alaska that we know the exact compass direction.

Q. Answer that yes or no, and then explain if you wish. Read the question. (Last question read.)

Mr. Ryan: Then read his answer. (Last answer read.)

Q. (By Mr. Ryan) I will ask you again, when you were going through Caamano Passage and were trying to use a chart to illustrate your position as you were going through there, isn't it a fact that the chart would be of no use to you whatever unless you knew your exact compass direction or magnetic heading so that you could lay it down on the chart and see which way to go on the chart? [2738]

A. Why, surely.

Q. So you did have to rely on your compass when you were going through a passage like that, and you would have to if the chart is to be of any use to you at all, isn't that so?

A. No, sir.

Q. Now tell me why not.

A. In order to explain it to you; in going through any narrow passage in Alaska the general

(Testimony of Sylvester Glass.)

custom here is that we put a vessel on an initial course, and now suppose——

Q. (Interposing) That is, going up through Brown Passage. Let us make it specific.

A. Yes, sir; or any place.

Mr. Long: Let him answer the question.

The Court: The objection is overruled.

The Witness: Supposing I left Brown Passage on a course going up to a position off of Point Lebo Island, two and one-half miles, it would be around North of East—this is only approximately, I don't know—I would give the quartermaster that course and he would put her on that course to steer by. If I sighted the land any time after that, and if I thought she was too close to Dundas Island, or too close to Zayas Island, I would tell him to right a half point, or left a half point, or whatever I thought would be necessary for the safety of the vessel.

Q. But you would hang onto your dead reckoning position until you could get some landmark, some recognized landmark that you could take a bearing off, so you could begin this piloting that you talk about?

A. Surely. You would have to. [2739]

The Court: May I interrupt you, Mr. Ryan?

Mr. Ryan: Surely.

The Court: I want to ask this witness a question there. Do you as a navigating officer, or do you not, in these Alaskan waters that you are talking about

(Testimony of Sylvester Glass.)

here, prefer to navigate by the aid of landmarks, either between islands or in the sight of islands, so that you can keep land in view, rather than to get out in clear water, that looks clear on the chart?

The Witness: We would.

The Court: That looks clear on the chart on the surface?

The Witness: Yes, sir.

The Court: In these Alaskan waters?

The Witness: Yes, sir. As a matter of safety, in my experience, the closer that you keep to land the more safety there would be, because there is lots of ways of ascertaining your position when you are close to land.

The Court: Is that true with any degree of peculiarity to these Alaskan waters?

The Witness: Yes, sir, it is. I do not believe there is any other body of water that we have in the United States, or to my knowledge in the world, where the peculiar part of the navigation of it is all by itself, that you couldn't see any place else. We depend on echoes an awful lot, getting an echo from the land to get our distance off. If you are too far off and lose sight of that land you don't know where you are.

The Court: Do you get echoes off Caamano Passage?

The Witness: Yes, sir; you always get an echo off [2740] Dundas Island.

The Court: That is all I wish to interrupt for.

(Testimony of Sylvester Glass.)

Q. (By Mr. Ryan) Now, you tell me any peculiarity in navigating through Caamano Passage that does not exist going from here, say, to Vancouver, up Puget Sound, or on Long Island Sound, or anywhere else?

A. I can tell you one peculiarity.

Q. In that particular area.

A. In that particular place. It is a funny thing, but no matter in which position you seem to lay as soon as you have the entrance of Caamano Passage clear it always seems that the vessel looks always in mid-channel.

Q. And yet that is a dangerous position to be in, isn't it, because there is a reef there?

A. Well, it is dangerous in a way, but I say, if your vessel looks to be in mid-channel that is all you can do.

Q. So that kind of piloting is dangerous if you are going up through Caamano Passage, isn't it?

A. It is the only kind that you can use going up there.

Q. You just testified that if it were a dark night and you were going up from Brown Passage up through Caamano Passage, you would steer a compass course for a known time, and maintain your dead reckoning position until you could pick up a landmark that you knew of on Zayas Island and take a bearing on it?

A. Yes, sir.

(Testimony of Sylvester Glass.)

The Court: Let the spectators not show any signs of approving or disapproving what is said by the witness, or by counsel or the Court.

Q. What is the set and drift of the current, that is, its [2741] force and direction, at a point, we will say, three miles West true from Zayas Island, say one hour after high water?

A. West true?

Q. After Port Simpson.

A. West true?

Q. Yes.

A. Three miles?

Q. Yes.

A. That would put you outside of Zayas Island, wouldn't it, counsel?

Q. Do you understand the question?

A. You asked me what the current was out there?

Q. Yes.

A. I don't know. I never have had any occasion to be outside of Zayas Island.

Q. What is the set and drift, that is, the force and direction of the tidal current, at a point five miles South true from Prince Lebo Island, at, say, one hour after high water at Port Simpson or Prince Rupert.

A. One hour after, if there wouldn't be too much wind outside, backing the water up, the current or the set of the tide would be running out of Brown Passage.

(Testimony of Sylvester Glass.)

Q. Do you know what that set and drift of the current at that point was on the morning of May 19, 1935, say at about 2:00 a.m.?

A. I wasn't there. I couldn't tell you what it was. I could tell you approximately the time of it by comparing the books, probably, figuring it up.

Q. What books? [2742]

A. The current table or the——

Q. Or the tide tables?

A. Yes.

Q. How about looking at the current table or diagram on Hydrographic Office Chart No. 2828, or British Admiralty Chart No. 1737?

A. For the approximate time it would be the same.

Q. That would show it to you, wouldn't it?

A. The approximate time.

Q. Unless there was an unusually strong wind before that, or an unusually high tide?

A. High tide, yes.

Q. Beyond the predicted tide?

A. Yes.

Q. Do you know the set and drift, or force and direction of the tidal current at a point nine miles West Southwest true, from Triple Island Light, at say, one hour after high water at Port Simpson or Prince Rupert?

A. No. Any of these questions it is almost impossible to answer, me sitting here and telling you right offhand what it would be.

(Testimony of Sylvester Glass.)

Q. Where would you get that information if you were seeking it?

A. The same way I told you before. If I want to get the approximate time I would look into the publications that are published for that purpose.

Q. Would you look at the Pacific Coast current tables?

A. Or the Canadian tide table, or the chart.

Q. Or the American tide table?

A. Yes. [2743]

Q. Or Chart No. 2828?

A. Yes.

Q. The current diagram?

A. Yes, sir.

Q. What are the differences between the American tide tables and the Canadian tide tables?

A. The differences?

Q. Yes.

A. In some localities there is as much as an hour's difference.

Q. Anywhere near Caamano Passage or Dixon's Entrance?

A. Well, there is a difference there. I don't know exactly the time, but there is a difference.

Q. What is the difference?

A. Well, I will have to look at that. In these questions you are asking me to remember too much.

Q. Which is correct, the American tide table or the Canadian tide table?

(Testimony of Sylvester Glass.)

A. In my opinion, neither one is absolutely correct.

Q. Is there any difference in the base level used by the American tide tables, as compared with the base level used by the Canadian tide tables?

A. Probably not, because the American tables are taken from the Canadian tables.

Q. At least you do not know of any difference, isn't that correct?

A. No.

Q. You do not know of any?

A. No.

Q. What charts and tables do you use when you are navigating [2744] through Caamano Passage in the night time, or at any other time?

A. Well, personally, I do not use any charts.

Q. You never use charts?

A. Not going through a place like that, no. I depend upon my local knowledge.

Q. I see. You never use charts at all?

A. Oh, absolutely.

Q. Now, do you understand the question or not?

A. Yes; I understood it.

Q. Then please answer it.

A. You are giving that locality——

Q. (Interposing) I am giving you Dixon's Entrance and Caamano Paassage, that vicinity around there. What charts and tables, if any, do you use when you are piloting or navigating up through Caamano Passage on a dark night, if any?

(Testimony of Sylvester Glass.)

A. Well, I would use the large scale chart, if I used any.

Q. Which chart is that?

A. I don't know the number of it. It is the large scale chart there, taking in part of Dixon Entrance, Brown Passage, and Edye Passage.

Q. Is that No. 8102?

A. I would have to look at it to give you the number. I do not know the numbers of those charts. We do not refer to them that way.

Q. Why would you use the charts in going up through Caamano Passage on a dark night?

A. To get an initial course, to find out what the initial course would be to start the vessel on. [2745]

Q. Then suppose you got up there and got right in the Passage, or right near it, what would you do?—And you didn't pick up this recognized landmark that you speak of?

A. I wouldn't go through.

Q. How much did you allow for current in setting your course from Brown Passage up through Caamano Passage; I mean how much do you usually allow when you set your course to go up through there, disregarding any unusual thing that might have happened afterwards, but I mean when you went up there and exercised your best judgment in setting your course from Brown Passage up through Caamano Passage, what allowance did you make for current?

(Testimony of Sylvester Glass.)

A. On the initial course that I first put the vessel on, I didn't use to make any allowance.

Q. Well, that is a rather strange way of navigating a ship, isn't it?

A. No, sir.

Q. Now to make any allowance if you expected any current at all?

A. No; it is not. I would watch the vessel and see which way she was drifting, and then haul her accordingly.

Q. It might be either way, either west or east?

A. In that locality it probably would. You have Hudson Bay Passage there to go by, a strong tide running out of there.

Q. I thought the current always set to the westward in Caamano Passage, so far as your opinion was concerned.

A. Well, you are not up to Caamano Passage, and you told me from Brown Passage to the Passage. After you get into Caamano Passage, where it is shut out by Dundas Island, [2746] In my experience the current has always set to the westward with considerable strength.

Q. In navigating a ship you would at least know whether you were in flood tide or ebb tide, wouldn't you?

A. Yes, sir.

Q. There is no question about you knowing that?

A. No.

(Testimony of Sylvester Glass.)

Q. Then with that information what allowance would you make in setting the course from Brown Passage up to Caamano Passage?

A. On my first course I wouldn't make any allowance.

Q. You would not?

A. No.

Q. Suppose it were a dark night and you did that, and then you just kept steaming along, you would run right on the rocks, wouldn't you?

A. Well, I don't know—I have been navigating there for 27 years and haven't run on the rocks yet.

Q. How would you ever know on a dark night whether you had been set to the westward or to the eastward, if you didn't make any allowance for current, and you knew there was a current in there?

A. If I couldn't see the land I wouldn't attempt to go through there.

Q. Now, as you proceeded up further 00 first, you set this course from Brown Passage up to Caamano Passage, and then you say after a while you would set another course, or make some allowance for current in this second change, but you wouldn't do it until you had picked up this landmark? [2747]

A. Yes.

Q. On this southern end of Zayas Island, is that right?

(Testimony of Sylvester Glass.)

A. Coming up from Brown Passage, you must pick up the southern end of Dundas Island first.

Q. Well, on a dark night, where there is some haze, it would be pretty dangerous navigation doing a thing like that, wouldn't it, that is, just going ahead full speed, hoping to pick up something that had no light on it?

A. Well, we do it all the time. I cannot explain it to you. [2748]

Q. Now, then, when you would come up there and you picked up this landmark on Zayas Island sufficiently clear so that you could take a bow and beam bearing on the southern end of that island, that is the first time that you would make any allowance for current, from then on, is that right—from that time on?

A. No, sir. I would start making my allowance for current after I got my departure off of Prince Lebo Island.

Q. Now, you have got something else. Prince Lebo Island is a flat top island, isn't it—kind of a mesa as they say down south?

A. It is a flat top island, yes, but you can always distinguish it on the darkest night on account of having the opening of the passage. When you get abeam there you pretty near know that you have got Prince Lebo Island abeam.

Q. Tell me of any landmark that you take on Prince Lebo Island as a bearing.

(Testimony of Sylvester Glass.)

A. That is pretty hard for me to tell you that.

Q. Well, do you understand the question?

A. Yes, sir, I do.

Q. Then answer it. There is no recognized landmark on Prince Lebo Island, isn't that right?

A. The whole island is recognizable. I can tell Prince Lebo Island on the darkest night?

Q. Can you tell it on the haziest night?

A. Approximately, yes. As long as I can see that land on that side I can be absolutely sure of my position, yes, sir.

Q. Suppose you could not see Prince Lebo Island, then what? [2749]

A. I would not dare to go up there unless I could see it.

Q. Oh, you are a day time navigator, is that right?

A. I object to that. I have been running up there for twenty-seven years, and I have been pretty successful, and I can navigate at night just as well as in the day time or at any other time.

Q. You do not mean to say that it is the usual practice for large steamers to stop in the middle of the night simply because they cannot see some land, do you?

A. I have been master of large passenger ships running up there, and I have stopped, yes, sir.

Q. Have you known one to stop off of Caamano Passage? If so, give me the name of the ship.

(Testimony of Sylvester Glass.)

A. I never had occasion to stop there. I could always go through.

Q. Well, the entrance to the fairway there is two and a half miles wide, isn't it?

A. Probably, yes.

Q. And there is not any danger in the whole of Caamano Passage except on that one reef on which the "Denali" stranded, isn't that right?

A. Yes, sir.

Q. Now, isn't it a well known fact among mariners that the flood tidal stream coming through Dixon's Entrance separates into two parts; that the stronger part turns to the right or around to the south—around Rose Spit, and the weaker half proceeds up past Dundas Island?

A. That is what the book says.

Q. Well, isn't that a well known fact among mariners?

A. Not in my experience it isn't. [2750]

Q. What is your experience that contradicts these government books?

A. In my own natural experience I have found the tide running in Caamano Passage from three to five miles an hour.

Q. That was under these irregular conditions that you have described, isn't that right?

A. Well, those are the conditions that I happened to be going through there under at the time.

Q. Have you ever reported any such observation by you to the United States Government

(Testimony of Sylvester Glass.)

through its Hydrographic Office or the Steamboat Inspection Service?

A. If you will look in the Coast Pilot——

Q. (Interposing) I say, have you ever reported it?

A. Yes, sir.

Q. In writing?

A. Yes, sir, in writing, and also in person.

Q. All right. When did you make such a report?

A. Well, if you will look in the Coast Pilot you will see my name, where I have written reports to the Hydrographic Office here and delivered them in person.

Q. Give me the date when you did that.

A. I cannot give you the date. I cannot remember all these dates. These things happened years ago.

Q. What?

A. These things happened years ago.

Q. What was the date, about?

A. I cannot tell you that.

Q. Well, give me your best recollection.

A. I don't know. I went up there and I seen the Commanding [2751] officer of the Hydrographic Office up here and I told him about these things, and at one time they put my name——

Q. (Interposing) You mean Commander Ingraham?

A. No. This was years ago. Captain Dietrich was up there at that time. I believe that was his name.

(Testimony of Sylvester Glass.)

Q. How many years ago was that?

A. Probably eight or ten years ago. I cannot remember these dates. They are so far back. I have got other things to remember than these dates.

Q. Give us the approximate number of years back.

A. I cannot even give you the approximate number of years back it was. I know that the record—that I have been up there, and that the record is up there.

Q. But you don't know the date?

A. No.

Q. And you cannot give me the nearest year, or within two or three years?

A. No, sir.

Q. And if there is not any such report on file you cannot explain its absence, is that right?

A. Well, my name was in the Coast Pilot—I got my name in there where I made these reports.

Q. Well, the Coast Pilot was issued then on the basis of those reports, was it?

A. Exactly. I told them about the unusual current encountered there, and at the same time I gave them some other data regarding Kadiak Island, and it is in the book, and it shows there that the report was made by me. [2752]

Q. Is it your testimony then that those Coast Pilots are wrong in that they accepted your information and put it in the book, or that they disregarded your information and put in other facts?

(Testimony of Sylvester Glass.)

A. The Coast Pilot—

Q. (Interposing) Just answer that question. Which is it?

A. I am trying to answer it.

Q. Which is it?

A. Well, as far as the Hydrographic Office is concerned they will take the statement of any man that has been running in any locality and who finds any unusual conditions up there and makes his report—they will publish them to the effect that that man has made that sort of a report. Then anybody reading that can go to work and use that information or not, just as they wish.

Q. Please answer my question.

Mr. Long: He has answered the question, if Your Honor please, and I object to that.

The Court: The objection is overruled. I will state, however, that the witness is doing pretty well. Proceed.

Q. (By Mr. Ryan) Do you understand the question?

A. Yes, sir.

Mr. Ryan: Read the question to the witness.

The Witness: Yes, sir, I understand the question.

The Court: I think it will save a lot of time if you will ask him another question, but in shorter form if you can.

Mr. Ryan: All right.

(Testimony of Sylvester Glass.)

Q. (By Mr. Ryan) Do the Coast Pilots correctly state the [2753] facts as you understand them with reference to the turn of the tidal streams and currents in Dixon's Entrance and in the vicinity of Caamano Passage, or not?

A. With reservations they do.

Q. And the charts of that area, particularly Hydrographic Office Chart 2828, issued by the United States Government Hydrographic Office, also correctly states the information that is on it with reference to the tidal streams and currents in Dixon's Entrance and in the vicinity of Caamano Passage, isn't that so?

A. I would not accept it as such.

Q. You think there is a difference between the charts and the current diagrams on the charts and the Coast Pilots, is that your theory?

A. Well, if you will allow me to answer it—

Q. (Interposing) Answer that by yes or no.

A. I cannot answer it by yes or no. Allow me to explain it and I will—

Q. (Interposing) Just say yes or no, and then you can go on and explain it all you want.

A. There is a difference.

Q. Now, what is the difference.

A. Now, let me explain it to you. When I send a report in to the Hydrographic Office that I encountered some unusual current or tidal condition, they will publish that and that will show that that is reported by Captain so and so or by Pilot so

(Testimony of Sylvester Glass.)

and so on a certain ship. Now, anybody else coming through there, they might encounter altogether different conditions from what I did. That information is only put in there to draw your [2754] attention to it, and for you to watch for it, if you happen to arrive there under the same conditions that I took those observations on. It is not absolutely put in there as anything to go by, or as being absolutely correct, or to rely on altogether.

Q. That is the only answer you want to make to that question?

A. Yes, sir. That is all that can be made.

Q. All right. Now, when a ship is proceeding up through Caamano Passage, the very first thing she has to do is to give a berth to that rock which dries 12 feet off the south end of Zayas Island, and on which the "Denali" stranded, isn't that right?

A. You have got to look out for it, yes.

Q. They first have got to give a berth to that rock before they begin navigating in mid-channel, isn't that so?

A. That is another question that I cannot answer unless I can explain it to you.

Q. Well, those are the instructions in the British Columbia Coast Pilot, and also in the United States Hydrographic Office issue of the British Columbia Coast Pilot, are they not?

A. Yes, sir.

Q. Now, in order to——

(Testimony of Sylvester Glass.)

A. (Interposing) May I draw your attention to the fact, as I stated before, that the funny part of going through Caamano Passage is that it seems that no matter what angle you approach there, and anybody that has been running through there can tell you the same thing—the vessel—as soon as you can see the opening between [2755] Zayas Island and Dundas Island you would swear that the vessel was absolutely in mid-channel clear of all dangers.

Q. Is that the reason why you have to first be sure that you have given a berth to that reef on which the “Denali” stranded before you begin navigating in mid-channel? Isn’t that the reason?

A. Surely.

Q. In order to give that berth you have got to keep on your compass course with a known time and maintain your dead reckoning position until you can get a definite bearing on a landmark such as that southern end of Zayas Island, and get your bearing on it, before you begin this mid-channel piloting which you say will run you on the reef there, isn’t that so?

A. No, sir.

Q. Well, explain why it is not so?

A. If you come up there and you run a course and get a bearing off of the south end of Zayas Island, you are going to pile up. It is too close to the reef in the first place. As long as the vessel in mid-channel looks an even distance between Zayas Island and Dundas Island, you are clear, and you

(Testimony of Sylvester Glass.)

are going to haul that ship and keep her clear as much as you think is necessary to keep her off the rock.

Q. What is the distance from Triple Island Light to this reef on which the "Denali" stranded?

A. Well, approximately about fourteen or fifteen miles, approximately. I cannot tell you the exact distance.

Q. Now, if a compass were in good condition so that it had—— [2756]

The Court: (Interposing) The Court will take a five minute recess.

(Recess)

Q. (By Mr. Ryan) Is the following statement true or false, "A person attempting to find"——

The Court: (Interposing) Please identify what you are reading.

Mr. Ryan: I was going to ask him just the straight question.

The Court: Well, identify it, please. If you are reading something verbatim out of a book, identify what you are reading.

Mr. Ryan: All right.

Q. (By Mr. Ryan) I read to you from pages 130 and 131 of "Weather" by P. R. Jamieson, Meteorological Assistant, F.R.G.S., fourth revised edition, and comprising, among other things, chapters on the compass; published by Taylor Instruments Company, Rochester, New York, U. S. A., 1923, as follows:

(Testimony of Sylvester Glass.)

“A person attempting to find his way by a map without a compass would be as well off as a steamer without a propeller. It would be almost impossible for him to put the map in front of him so that it would be a reproduction of the country ahead of him unless he knew positively and absolutely in which direction north was”.

Is that statement true or false, in your opinion?

A. I cannot answer that because in my case I go by what I [2757] can see up there. Most of the time I go by what I see up there. If I cannot see, I don't go. In theory probably that is right, but in practice probably it would not work.

The Court: (Interposing) When you say “up there”, you mean Alaskan waters?

The Witness: Yes, sir. I depend up there mostly on my local knowledge. I can go through there as long as I can see. As long as I can see any land at all I will go through there, whether it is day time or night time or any other time.

Q. (By Mr. Ryan) You have a two and a half mile wide expanse of water ahead of you, have you not?

A. Yes, sir.

Q. And there is no difference between Alaska and any of the rest of the world in that respect?

A. Not when you come to a narrow passage, no.

(Testimony of Sylvester Glass.)

Q. Now, when you have a compass in good condition, you can know the direction to follow going through there, if you have a proper chart, isn't that so?

The Court: If you are talking about compasses, I wish you would ask him about compasses. All these other things have been elicited by answers before, and you are simply repeating those things over and over again.

Mr. Ryan: I am going into that which was brought out by Your Honor.

The Court: If you are starting on compasses, ask him about that, and nothing else.

Mr. Ryan: No, I am not starting on that. I am [2758] trying to show that there is absolutely no big difference so far as this particular area is concerned, as far as navigation is concerned, than any other place in the world that has the same expanse of water.

The Court: The Court will let you propound this last question and he may answer it.

Q. (By Mr. Ryan) Do you remember the last question?

A. You asked me if there was any difference up there as compared with any other locality in the same condition or under the same condition, isn't that it?

Q. Yes.

A. Well, all inland waters will probably have

(Testimony of Sylvester Glass.)

the same peculiar peculiarities regarding navigation through them.

Q. That is, if you have a good compass and a proper up to date large scale chart, and the proper tide tables and the proper current tables, and Coast Pilots, you can navigate up through Caamano Passage, the same as you could in any similar expanse of two miles and a half wide water in the world, could you not?

A. No, I would not say that you could.

Q. Now, tell me why you could not?

A. Well, you can have all the charts and all the Coast Pilots, and everything you want, but unless you have some local knowledge up there you are not going to get through there without the chance of getting in trouble.

Q. Well, if none of these unusual conditions that you have mentioned exists, then your chances of getting in trouble are practically nill, unless there is something wrong with the compass, isn't that so, under those circumstances? [2759]

A. Well, you can see here—as long as you can see, why, the compass does not enter into it.

Q. And if you cannot see, it does, is that right?

A. If you cannot see, you don't go through.

Q. That is right. If you cannot see a recognized landmark?

A. Yes, sir.

Q. Now, before you turn west into Brown's Passage you were in Chatham Sound, weren't you, on these voyages that you made up there?

(Testimony of Sylvester Glass.)

A. I didn't come up Chatham Sound. I came up inside.

Q. I know, but before you made the turn through Brown's Passage to the westward, you were in Chatham Sound?

A. Yes, sir.

Q. Now, the usual course of vessels in Chatham Sound that are bound up to the northern part of Dixon's Entrance and to the westward, like Prince of Wales Island, and Ketchikan, is to go straight north up Chatham Sound and then make the turn around to the westward, around Lord Light, isn't that right?

A. No, sir. There is no usual run.

Q. There is no usual run?

A. No, sir.

Q. Isn't there a usual run given in the United States Coast Pilot—Alaska Pilot—Alaska Coast Pilot, Volume I—Part I, issued by the United States Government?

A. The usual route?

Q. Yes, isn't there?

A. Why, there are a lot of usual routes up there that we do not use. [2760]

Q. Isn't there a usual route given in the United States Coast Pilot for Alaska, part I, to Dixon's Entrance and Yakutat Bay?

A. To Ketchikan there is.

Q. For vessels coming up the inside passage, isn't that right?

(Testimony of Sylvester Glass.)

A. Yes, sir.

Q. Now, when you are in Chatham Straits you are on the inside passage, are you not?

A. Yes, sir.

Q. And the inside passage is the usual route—and on the inside passage the usual route is to go up north in Chatham Sound and make the turn to the left or westward past Lord Light between Cape Fox and Dundas Island, isn't that so?

A. No, sir.

Q. Are you familiar with the Alaska Coast Pilot, No. 1?

A. Yes, sir; I have read it.

Q. What does it read?

A. I don't know just exactly what it reads now.

Q. And you say that it doesn't show any usual course?

A. Nobody going up there follows that. There are a lot of courses, and there are a lot of routes and lots of other information in there that we don't use.

Q. I show you a map at the very beginning of this United States Coast Pilot, Alaska, Part I, and I will ask you if that does not show the usual route of vessels (handing book to witness)?

A. I don't know.

Q. Well, look at it and see.

A. I know, but just a minute. Where does this start from? [2761] That might be coming out from

(Testimony of Sylvester Glass.)

Ketchikan and coming out that way. That does not show that you come up that way.

Q. Well, Ketchikan is up here, isn't it (indicating on map)?

A. Surely.

Q. Then what are you talking about? Over to the right here—you would be way down below where you were in Chatham Sound, isn't that so?

A. There is nobody—I am telling you right now to my own personal knowledge there is no one that ever follows this route going to the west coast.

Q. I see. There is a route shown here in red ink on this chart by the United States Government as part of the United States Coast Pilot, Alaska, Part I, is there not, running from the southern part of Chatham Sound up to the northward, and then turning to the west between Lord Rock on Cape Fox and Tree Point on Dundas Island, and then continuing west, is there not, along the northern part of Dixon's Entrance?

A. Well——

Q. (Interposing) Tell me if that run is there or not.

A. This is——

Q. (Interposing) Answer the question. Don't go off on something else.

A. No.

Q. That line is not there?

A. No. This is a different route altogether.

(Testimony of Sylvester Glass.)

Q. I am asking you whether that line is there or not. Is not the line here (indicating)?

A. Yes, sir, there is a line here, yes, sir, but the line [2762] that you are referring to, and what you are trying to tell me are two separate things altogether. This does not go anywhere near the west coast of Prince of Wales Island.

Q. Isn't there a line there?

A. Yes, sir, there is a line there.

Q. The course for a vessel to follow?

A. I don't know what that is. There is a red line shown there, yes.

Q. And it is the only red line on the chart, isn't it?

A. Yes, sir.

Q. And it show the inside passage, doesn't it?

A. It shows the inside passage, yes, sir.

Q. And you were in the inside passage when you were in Chatham Sound?

A. Yes, sir.

Q. And that is further shown in detail over here on page 9 of that book, is it not, on the run from Lucy Island northward, past Whitesand Island, Grein Island and past Tree Point to along the northern side of Dixon's Entrance?

A. No, sir. It shows here that this is the course to Ketchikan. If you will read them down you will find that that is the course given, and that line there is to Twin Island, Hog Rocks, Angle Point, Mountain Point into Ketchikan. You are talking

(Testimony of Sylvester Glass.)

about a different thing than what you are bringing up to me in the book.

Q. Well, Ketchikan is considerably to the westward of Dundas Island and Zayas Island, isn't it?

A. Why, it is way up the inside passage here (indicating). [2763]

Mr. Bogle: If Your Honor please, I want to interpose an objection on the ground that this is not proper cross examination and that it is immaterial.

The Court: Except possibly to test the witness' credibility and experience, it is difficult for me to see what materiality it has. I have been thinking for about the last twenty minutes that counsel had covered all the ground that was covered on direct examination.

Mr. Ryan: I am finished with that.

The Court: But the Court always hesitates to cut counsel off, but request counsel to try to finish as soon as he can.

Q. (By Mr. Ryan) You have stranded some vessels yourself, Captain, haven't you?

A. Yes, sir.

Q. How many.

A. Two.

Q. What are their names?

A. I was on one that my pilot stranded, and one of them I was on the "Admiral Watson", where I was on watch myself.

Q. You were the captain, weren't you?

(Testimony of Sylvester Glass.)

A. Yes, sir.

Q. That was in Alaskan waters, wasn't it?

A. Yes, sir.

Q. Do you know Ernest Falk?

A. Do I know him?

Q. Yes.

A. Well, he was out to my house one day.

Q. That is Ernest Falk sitting over there, is it not (indicating)? [2764]

A. Yes, sir. That gentleman was out to my house one day.

Q. All right. What in your opinion does good and safe practice require with respect to the frequency of adjustment of compasses on steamers sailing to Alaska from Seattle?

A. To adjust them any time that the master sees fit to have them adjusted.

Q. Well, can you answer that question? Answer that question with reference to the period of time. That is, the frequency of testing.

A. No.

Q. That in your opinion good and safe practice requires.

A. No. There is no set period of time.

Q. What are the various reasons why, in your opinion, compasses need adjustment?

A. Well, when they show excess deviation, or sluggishness, or things like that, when, then, of course, they should be adjusted.

(Testimony of Sylvester Glass.)

Q. Are those the only reasons that you can think of?

A. Yes, sir.

Q. For the necessity of compass adjustment?

A. Yes, sir.

Q. I believe you testified on direct examination that excessive deviation in your opinion was a certain number of degrees, is that right?

A. Yes, sir.

Q. Well, now, if the master does not know the amount of the deviation, you said there would be a different number of degrees, isn't that right?

A. If he didn't know? [2765]

Q. Yes.

A. I beg to differ. No master can know without knowing the deviation of his compasses.

Q. All right. How many degrees of deviation on the compass would be dangerous in your opinion if the master didn't know about it and if the vessel were sailing from Seattle to Alaska through Hecate Straits and Caamano Passage?

A. Well, it is a big question, stating if he didn't know.

Q. Yes.

A. Why, any amount of error in your compass would be dangerous if you didn't know what it was.

Q. Well, what do you mean by "any amount of error", thirty seconds?

A. No. Say two degrees probably would throw him off on any length of time, but on short courses

(Testimony of Sylvester Glass.)

where you change courses all the time, why, four or five degrees unknown deviation would not affect him any.

Q. I thought you testified on direct examination that six degrees would be dangerous on a compass that you knew about.

A. I didn't say "dangerous". I said that no amount of deviation on a compass is dangerous if you knew it.

Q. You don't think that a large deviation on one of several headings of a compass makes that compass dangerous and unsafe to use, provided you know about the amount?

A. If you know the amount——

Q. (Interposing) Shown at a particular instant?

A. If you know the amount of the deviation I do not figure that any amount of error is dangerous.

[2766]

Q. Well, suppose a ship had a propeller and lost one of the blades of the propeller. Now, if you knew about that you could still operate the engines and get there, could you not?

The Court: That is argumentative, counsel. Asking him about a propeller when you have been asking him questions about the compass is argumentative. Proceed and ask him questions about the compass.

Mr. Ryan: Yes. [2767]

(Testimony of Sylvester Glass.)

Q. (By Mr. Ryan) At your residence in Seattle, on or about October 1, 1937, did you or did you not have an interview with Mr. Ernest Falk in which you said, in substance and effect, as follows, "In my opinion the compasses of a vessel engaged in the Alaska trade should be adjusted at least once a year; in all events should be adjusted after a winter lay-up at West Seattle." Did you or did you not so state at that time to Mr. Falk?

A. I did not. Now, in regard to this, Your Honor, as there is a question of going to work and asking me these questions about when Mr. Falk was out to the house talking to me, I wish to state to you that there was two persons, my wife and Mr. Burke was in the house at this conversation—

Q. (Interposing) Will you first tell us what you did say, and we will come to the other circumstances later.

A. Falk came out to the house and wanted to know if I would appear as your witness.

Mr. Summers: (Interposing) If the Court please, I wish to object—

Mr. Long: (Interposing) I think the witness should be permitted to ask the question.

Mr. Summers: This is purely an impeaching question. Facts and circumstances possibly may be permitted to be brought out on redirect examination of this witness, but I submit that the witness should not be permitted to inject voluntary comments of his own. He has said he didn't make any such statement.

(Testimony of Sylvester Glass.)

Q. (By Mr. Ryan) Do you deny that you made that statement?

A. Yes, sir; I deny it. [2768]

Mr. Bogle: The next question was "What statement did you make?" And now they are trying to stop the witness from answering that question.

Mr. Ryan: I move to strike out the answer as not responsive, in view of that statement.

The Court: The motion to strike is granted, and if any explanation is desired it may be gone into on redirect examination.

Mr. Bogle: May I ask that the question be read that was asked the witness?

The Court: I think I understand it sufficiently to be satisfied with the ruling made, and you can, on the side of the Petitioner, redirect the examination along that thought, if you desire.

Q. (By Mr. Ryan) What did you say, if anything, to Mr. Falk on or about October 1, 1937, with respect to the frequency of adjustment of compasses on a vessel engaged in the Alaska trade, irrespective of whether she had been laid up; and also in respect to the frequency of adjustment of compasses whenever a ship had been laid up for the winter at West Seattle?

A. I told him there was no set time of adjusting compasses, and also told him I was on some ships where the compasses had not been adjusted for seven years, and were still running.

Q. What did you tell him was your opinion

(Testimony of Sylvester Glass.)

with respect to what good and safe practice required with respect to the frequency of adjustment of compasses on vessels engaged in the Alaska trade?

A. A question like that was never asked, to my knowledge. [2769]

Q. What did you tell Mr. Falk on that occasion, on or about October 1, 1937, in Seattle, with respect to the frequency of the adjustment of compasses on vessels which had been laid up for the winter at West Seattle?

A. I didn't tell him any frequency.

Q. You were not asked that question at all?

A. I was not asked that question, how often should they be adjusted. I told him any time that the master of the vessel wanted it, or the compasses were in bad order, they should be adjusted.

Q. What did you tell him at that time with respect to the frequency of adjustment of compasses on a vessel engaged in the Alaska trade after a winter lay-up at West Seattle.

A. The question of winter lay-up was never brought up.

Mr. Bogle: Just a minute, Captain; I want to object to this form of question as not being the proper form of impeaching question.

The Court: I think there is some merit to that objection. You should ask him the specific question.

Q. (By Mr. Ryan) Did you or did you not—

The Court: It has been covered, and you need not go back over the same ground, but in the future

(Testimony of Sylvester Glass.)

ask him so-and-so, whether or not he made such-and-such a statement.

Q. (By Mr. Ryan) Did you or did you not state to Mr. Ernest Falk, on or about October 1, 1937, in Seattle, in substance and effect as follows: that when a vessel is laid up for the winter at West Seattle boneyard the deviation on the lay-up heading would probably be less than on the other courses, or other crossing courses? Did you or did [2770] you not make that statement?

A. That is a new one on me. That was never brought up at all, that question.

Q. You didn't make that statement, is that right?

A. No, sir; because it is absolutely—it is out of the question to make a statement like that.

Q. Did you or did you not, on or about October 1, 1937, in Seattle, state to Mr. Ernest Falk, in substance and effect as follows, that if the vessel is laid up on a Northwesterly course the range of error would be greater on a North $\frac{3}{4}$ West course.

A. No, I didn't make any statement like that, because that is way over my head.

Mr. Ryan: That is all, Your Honor. I offer in evidence the chart, Claimants' Exhibit A-14 for Identification, as marked by this witness, being U. S. C. & G. S. Chart No. 8102, on which the witness has laid down in pencil, free-hand, the course that he followed in proceeding through Brown Passage and up Brown Passage, and then sharply to the westward over the waters of Dixon's Entrance, to the west side of Dixon's Island.

(Testimony of Sylvester Glass.)

The Court: Another copy of that chart is already in evidence?

Mr. Ryan: Yes, Your Honor. The other one is the one the second mate had.

The Court: What is the purpose of this offer?

Mr. Ryan: As illustrative of the testimony of this witness.

The Court: Very well. That puts the matter before the Court. Claimants' Exhibit A-14 is admitted for that [2771] limited purpose.

(Chart illustrating testimony of Capt. Glass received in evidence Claimants' Exhibit A-14.)

Mr. Ryan: That is all.

The Court: You may proceed now, Mr. Bogle.

Redirect Examination

By Mr. Bogle:

Q. Capt. Glass, where did this conversation with Mr. Falk take place?

A. At my home.

Q. Would you state to us, as near as you can remember, in substance, just what that conversation was?

A. Yes, sir. Mr. Falk called me up on the 'phone and wanted to know if he could come out to the house and talk about the questions he had in mind, and I told him certainly, he could come out any time. Mr. Falk came out and he wanted to know if I knew anything about the "Denali" case. I told him I knew only what I heard about it, that I was

(Testimony of Sylvester Glass.)

up North at the time she struck. However, I told him that I had discussed the case with Mr. Long, but also gave him to understand that I was not bound in any way by Mr. Long in any respect, that we had only talked the case over.

The Court: That seems to me to be very immaterial. Isn't there something more material by way of explanation that is desired, and if so won't you get right at that?

The Witness: Well, the only thing is, Your Honor, he wanted to know if I wouldn't appear as their witness, and the next day I called him up and told him it was [2772] absolutely unethical for me to appear as their witness on account of discussing the case with Mr. Long already, and any question——

Q. (Interposing) Was that the substance of the conversation?

A. Well, the compasses, there was some talk about the compasses, how often the compass should be adjusted, and different things like that that were asked, yes, sir.

Q. That is what I want. Give us, as near as you can recollect, what was said about the compasses, what you told him about the compasses.

A. One of the questions was, I believe, if a vessel laid over in the yard for a long length of time, over in West Seattle, what would be the effect on the compasses? I told him, I believe, that I didn't know what the effect of it would be, as I had never

(Testimony of Sylvester Glass.)

been on a ship that laid over in the yard. And another thing, if there was any specific time when the compass should be adjusted. I told him I couldn't answer that, because there isn't any specific time that a compass should be adjusted—in my opinion, there couldn't be. That is up to the man on the ship to see whether they needed adjustment or not.

Q. Did you have any further conversation with him about the compass, excepting as you have stated?

A. No, sir; I don't believe I did.

Q. Capt. Glass, in answering counsel's questions as to the extent upon which you rely upon the published data by the Canadian and American governments, I will ask you if you had in mind, first, the notation on Chart No. 2828, reading as follows—

Mr. Summers: (Interposing) Just a moment, if Your [2773] Honor please——

Mr. Ryan: (Interposing) This is highly leading, and I object to it on that ground.

Mr. Bogle: I am merely redirecting on the matter brought out solely by you, Mr. Ryan. You asked him if he relied upon this data.

The Court: The objection is overruled. You may call his attention to certain record information, if it is information that is in evidence, or on a chart that is in evidence.

Mr. Bogle: It is on Chart No. 2828.

Mr. Ryan: May I be heard for just a minute?

(Testimony of Sylvester Glass.)

The Court: No. The Court's ruling may stand. You may have an exception.

Q. (By Mr. Bogle) The heading title is "Average direction and rate of tidal stream." You are familiar with that?

A. Yes.

Q. Giving the average rate?

A. Sure.

Q. Did you also have in mind in answering that question this statement in the current tables, United States Coast & Geodetic Survey, 1935—

Mr. Ryan: (Interposing) Before that is read, may I suggest that this is highly leading and suggestive, and I object to it on that ground. If counsel for the witness merely wants to call his attention to the book he can hand the book to the witness and let the witness say what part of it he referred to and what part he did not refer to, but for counsel to pick out particular things and read them to the witness, and make it appear that way, [2774] it seems to me, in substance, to be suggesting the answer to the witness. He can refer to the pages and all that sort of thing, but this is leading and suggestive.

The Court: So far as identifying the place referred to, that much of your objection is sustained. All other phases and parts of your objection are overruled.

Mr. Ryan: Exception, please.

The Court: Exception allowed.

(Testimony of Sylvester Glass.)

Q. (By Mr. Bogle) Pages 7 and 8, current tables of the Pacific Coast; I will ask you if you are familiar with the statement at the bottom of page 7?

A. Yes.

Q. And at the top of page 8?

A. Yes, sir. I have read that statement.

Q. Do you remember that statement, and can you give us the substance of it?

A. The substance of it is that you do not depend on that.

Mr. Ryan: Wait a minute; is he just giving the words in the book?—If he is, I object to it. He has already said that he agrees with it, and I suggest that there is no point in asking the witness to recite it.

Mr. Long: I suggest that counsel make an objection.

The Court: The witness can take care of himself, and the man speaking for the Claimant is able to take care of himself. If you gentlemen do not quit imposing upon the time and patience of the Court, as to one man on a side helping out another man on the same side, that condition provoking further additions and enlistments on the opposing side, then I will have to just prevent you [2775] from doing it at all. Proceed, Mr. Bogle.

Mr. Bogle: I will have to have the question read. (Record read as follows:

(Testimony of Sylvester Glass.)

“Q. Pages 7 and 8, current tables of the Pacific Coast; I will ask you if you are familiar with the statement at the bottom of page 7?

A. Yes.

Q. And at the top of page 8?

A. Yes, sir. I have read that statement.

Q. Do you remember that statement, and can you give us the substance of it?

A. The substance of it is that you do not depend on that.”)

The Witness: Well, the substance of it is to the effect that you do not want to rely on those tables, as they are only approximate data given in there.

Q. (By Mr. Bogle) Is your opinion then in accordance with this statement, your personal observation there:

“The relation of current to tide is not constant, but varies from place to place, and the time of slack water does not generally coincide with the time of high or low water; nor does the time of maximum velocity of the current usually coincide with the time of most rapid change in the vertical height of the tide.”

A. I have already stated that I do not go by that.

Q. (Reading)

“In using this table it should be borne in mind that actual times of slack or strength occasionally differ from the predicted times by

(Testimony of Sylvester Glass.)

as much as [2776] half an hour and in rare instances the difference may be as much as an hour.”

A. Yes, sir. The only statement was that I said the difference was as much as three hours at some times.

Q. I call your attention to “British Columbia Pilot” H.O. No. 176, the statement on page 7, reading as follows:

“Current arrows on charts show only the most usual or the mean direction of a current; it must not be assumed that the direction of a current will not vary from that indicated by the arrow. The velocities of currents also vary with circumstances, and those given on the charts are merely the mean of those determined, possibly from very few observations.”

Are you familiar with that statement?

A. I have made that statement already.

Q. And on page 27 of the same volume, this statement:

“In crossing the entrances to inlets and estuaries it is necessary to make allowance for the current setting into or from them, according to the state of the tide.”

A. Yes, sir; absolutely. The water is bound to go in or out with considerable strength.

Q. Now, Capt. Glass, have you had any experience in piloting naval vessels, vessels of the United States, in Alaska waters?

(Testimony of Sylvester Glass.)

Mr. Summers: I make the same objection, as not redirect examination.

Mr. Bogle: I merely want to show that in spite of all the charts and perfected instruments that naval [2777] vessels navigating these waters always take a civilian pilot, and ask this witness why.

The Court: The objection is sustained, Mr. Bogle. I do not think it is necessary to go into that.

Mr. Bogle: I thought it was proper because it was brought out on cross-examination. I did not go into it at all.

The Court: It is not necessary. The Court has in mind the testimony of this witness about local knowledge and about the use of charts and compasses, and all of the rest of the testimony given. There is no use in proceeding further with any collateral matters.

Q. (By Mr. Bogle) Capt. Glass, is there any direct information contained in either the Canadian or American tide tables with reference to Caamano Passage?

A. No, sir; there is not. The nearest——

Q. (Interposing) How do you get the——

Mr. Ryan: (Interposing) Please let the witness answer the question.

The Court: Had you finished, Captain, or did you wish to add anything?

The Witness: No; I said that there is not.

The Court: Then ask him another question.

(Testimony of Sylvester Glass.)

The Witness: I was going to say, in that locality, exactly in that passage.

Q. (By Mr. Bogle) Then how do you get a reference on Caamano Passage from the published tide tables, either Canadian or American?

A. Well, I used to get it by getting the time which is published for East Devil Rock, and then split the dif- [2778] ference as near as I possibly could.

Q. East Devil Rock, is that a tidal observation station?

A. I couldn't say whether there is any actual observation taken there. I do not think there has been. It is just approximate time that they figure the tide would turn at that point at that time.

Q. What is the reference station for East Devil Rock?

A. Port Simpson. You can use Port Simpson or Prince Rupert.

Q. In the American tide tables what is the reference point for this vicinity, East Devil Rock?

A. Wrangell Narrows, I believe.

Q. You have to transpose them from the reference station to the book?

A. Yes, sir; you have to interpolate the time and the height of the water from these tables that are given.

Mr. Bogle: That is all.

The Court: Is there anything else that is necessary?

(Testimony of William Charles Ansell.)

Mr. Ryan: I think that is all, Your Honor.

The Court: You will be excused from the stand, Capt. Glass. Call your next witness.

(Witness excused.)

WILLIAM CHARLES ANSELL,
called as a witness on behalf of Petitioner, being
first duly sworn, testified as follows:

Direct Examination

By Mr. Bogle:

Q. State your name and address?

A. William Charles Ansell. I live in Seattle.

Q. What is your business? [2779]

A. Master mariner and commercial pilot.

Q. What licenses do you hold, Captain?

A. Unlimited ocean master's license; pilot for Puget Sound, Southeastern and Southwestern Alaska, including Bristol Bay and its tributaries.

Q. How many years have you been going to sea?

A. Since I was ten years old.

Q. How many years have you held a license?

A. Since 1904.

The Court: Captain Ansell, the record does not show any information as to how old you are now, and from the record we could not tell how long you have been going to sea. Will you answer that question?

The Witness: Approximately 51 years.

(Testimony of William Charles Ansell.)

The Court: That is how long you have been going to sea?

The Witness: That is how long I have been going to sea. That is the question as I understood it, Your Honor.

The Court: Was there any question about how long he had been piloting in those waters?

Mr. Bogle: That is the next question.

The Court: Very well.

Q. (By Mr. Bogle) During that period of 51 years how much time have you been navigating as an officer or pilot in Alaska waters?

A. As officer since 1904.

Q. With what companies have you been connected?

A. With the Seattle Steamship Company, the Borderline Transportation Company, the Northland Steamship Company, [2780] The Pacific Coast Steamship Company, the Northwestern Fisheries, International Fisheries, and then various commercial odd jobs which I had as pilot.

Q. Have you had any experience as a Navy pilot?

A. I have been doing quite a lot of Navy piloting since 1929.

Q. Any of that in Alaska waters?

A. All of it in Alaska waters. Well, that is the Inside Passage, through British Columbia and Alaska.

(Testimony of William Charles Ansell.)

Q. To your knowledge, Captain, is it the practice of the United States Navy to employ civilian pilots in navigating Alaska waters?

A. In most cases vessels going on the Inside take a civilian pilot.

Q. What has been the extent of your experience in Hecate Strait and Dixon's Entrance, particularly that portion of Hecate Strait from a point abeam of Triple Island to the entrance of Caamano Passage?

A. For two years, or two seasons, I was second mate and acting pilot on the "Diamond Cement".

Q. Where was she navigating?

A. From Seattle to View Cove, on Dahl Island.

Q. Did she on that route go through Hecate Straits?

A. We went Hecate Straits every trip, either from the southward or through Brown Passage.

Q. How often did you go through Caamano Passage?

A. On her we never went through, but while I was with the Northwestern Fisheries—she is now called the "North Haven", but she was then the "Eastern Gale"—I used to go through twice or three times every season. [2781]

Q. Have you ever taken a Navy ship through there?

A. I was through last year with the "Louisville".

Q. What size ship is that?

A. 10,000 gross.

(Testimony of William Charles Ansell.)

Q. You were on her in what capacity?

A. As commercial pilot.

Q. Have you had sufficient experience in the locality mentioned, that, is, Hecate Straits and Caamano Passage, to form any opinion, from your own observations, as to the state of the tide in a position, say, first, ebb tide within a mile or two miles south of Zayas Island?

Mr. Summers: If Your Honor please, I want to renew the objection that we made to the testimony of Capt. Glass this morning, and to this line of examination, on the ground that if this examination is tending to bring out testimony contradicting the answers to the interrogatories, and if it is testimony upon which the petitioner may not rely—and they are bound by their answers to the interrogatories—we object to it on that ground; and if it is in harmony with those answers to interrogatories, then it becomes immaterial.

Mr. Bogle: I do not quite understand the last statement, that it becomes immaterial. Do you admit the interrogatories without any proof?

Mr. Summers: No; but I contend that you cannot contradict the interrogatories.

The Court: The Court can pass upon this question raised without any further statements.

Mr. Ryan: I would like to object to this whole line of examination. [2782]

The Court: Mr. Ryan, I would like for counsel on your side to decide who is going to speak as representing your side to the Court.

(Testimony of William Charles Ansell.)

Mr. Ryan: Mr. Bogle just made the statement on the record——

The Court: Mr. Summers is a very able lawyer, and so are you, and there is no need of having two able lawyers speak for one side at a time. Is there something vital that ought to be put on the record on your side, except what Mr. Summers has covered? I do not want to hear an argument.

Mr. Ryan: I merely wanted to make the objection on the same ground that I made the objection at the beginning of the testimony of Capt. Glass, to the Petitioner being permitted to produce evidence in this way without stating its position as to whether the petitioner now takes the position that it knew the cause of this stranding and is now trying to show it, or whether it is relying on its petition as it stands that it doesn't know the cause of this stranding, whether it is relying on peril of the sea or negligent navigation or an unseaworthy ship, which became unseaworthy after sailing, or what the position of the Petitioner is. I was going to ask Your Honor to have the objection on all those grounds, and on the grounds stated by Mr. Summers, the grounds stated to the testimony of Capt. Glass—I would like to have that objection being understood as made to each question.

The Court: The Court is agreeable to that, unless there is some objection to it.

Mr. Bogle: No. [2783]

Mr. Ryan: If that is agreeable.

(Testimony of William Charles Ansell.)

Mr. Bogle: That the same objection runs to all this line of examination?

The Court: Yes.

Mr. Bogle: That is quite agreeable.

The Court: The objection is overruled, and the Court is agreeable to the objection being considered as running to this whole line of testimony, in which event the Court overrules the objections. Do you wish to preserve an exception?

Mr. Ryan: Yes; I would like to reserve an exception.

The Court: Exception allowed.

Mr. Ryan: To each adverse ruling. And I would like to make a formal motion that the Court direct the Petitioner at this time, and counsel for Petitioner, to state on the record what they are trying to prove by this witness, that is, what the general point is. That is, are they trying to show peril of the sea, or negligent navigation, or unknown cause of the stranding, or a known cause, and if so which one they say it is. I think we are entitled to that, especially at this stage of the proceedings. Frankly, I do not know what the Petitioner is trying to prove by this witness, or by Capt. Glass. I do not know what legal point they are trying to prove.

This testimony contradicts, as I understand it, the formal pleadings before this Court, in which they swore that the cause of this was unknown, that they do not know the cause. I object to padding the record and wasting a lot of our time here.

(Testimony of William Charles Ansell.)

The Court: There is more time wasted in arguments and the statements of counsel than anything else I know of.

Mr. Bogle: I think I am entitled to make a statement as to what portion of the pleadings we are now directing our testimony.

The Court: Do you wish to make a statement.

Mr. Bogle: Yes; and I wish to have them advise us, because I assume it to be our duty to advise the Court fully as to all the circumstances, and then it is for the Court to decide.

The Court: That is what the Court had in mind.

Mr. Bogle: Further, it is our burden as to limitation of liability, and it is our duty, to show to the Court all the circumstances surrounding the situation, and that as to each of such circumstances we were without privity of knowledge.

The Court: The Court is ready to rule, unless counsel feel that there is something else to put in the record.

Mr. Ryan: I think, Your Honor, that this trial would be materially shortened, and the issues would be narrowed, and the thing brought into some reasonable compass, if the Petitioner were required to state on the record its exact position here, as to what facts it relies on, what general facts, what ultimate facts, because, as I see it——

The Court: You have already said that in your previous statement.

Mr. Ryan: Yes, Your Honor.

(Testimony of William Charles Ansell.)

The Court: The motion is denied.

Mr. Ryan: Exception, please. [2785]

The Court: An exception is allowed.

Mr. Bogle: I will ask that the question be read now.

The Court: At this point we will take the noon recess.

(Whereupon a recess was taken until November 16, 1937, at the hour of 2:00 o'clock p.m.) [2786]

November 16, 1935,
2:00 o'clock P. M.

Court convened pursuant to adjournment;

All parties present.

The Court: You may proceed with the trial.

Mr. Bogle: I think there was a question unanswered, Your Honor.

The Court: Yes.

Mr. Bogle: Take the stand, Mr. Ansell.

W. C. ANSELL,

resumed the stand for further examination.

Further Direct Examination

By Mr. Bogle:

Q. Will you please read the question, Mr. Reporter?

(Question read as follows: "Have you had sufficient experience in the locality as mentioned, that

(Testimony of William Charles Ansell.)

is, Hecate Straits and Caamano Passage, to form any opinion, from your own observations, as to the set of the tide in a position, say, first, ebb tide within a mile or two miles south of Zayas Island?")

Q. Just state what your experience in that connection has been, Captain.

Mr. Ryan: Just a minute. May I examine the witness to ascertain what his experience has been there? I mean that his conclusion as to the experience that he has had for him to testify as to this, it seems that it is for the Court to decide. [2787]

The Court: In view of the witness' former testimony as to his experience in Alaska—in southeastern and southwestern waters, Mr. Ryan, I think that that was covered.

Mr. Ryan: This question is asked with reference to Caamano Passage. May I ask a question or two preliminary as to whether he has had such experience up there?

The Court: Mr. Bogle, will you kindly go into that a little further, and then I will see.

Mr. Bogle: Yes. I thought that I had.

Q. (By Mr. Bogle) What experience have you had in the waters in the area of Dixon's Entrance, and Hecate Straits, and particularly from Triple Island Light to the entrance of Caamano Passage?

A. For two seasons I was second mate, acting as pilot on the "Diamond Cement", and we made a round trip each week so that meant that I had to go across Dixon's Entrance twice a week.

(Testimony of William Charles Ansell.)

The Court: Over what period of time?

The Witness: Two seasons. Of course, they don't run in the dead of winter there.

Q. (By Mr. Bogle) Are you familiar with the waters south of Caamano Passage?

A. Yes, sir.

The Court: For about a mile as I understood the question of Mr. Bogle.

The Witness: Yes, sir. The whole district.

The Court: The whole district?

The Witness: Yes, sir. [2788]

The Court: You mean from Zayas Island?

The Witness: From Zayas Island clean out to the ocean, and then up the other way.

Q. (By Mr. Bogle) Then, Captain, solely from your experience what would you say was the set of the ebb tide at a point one mile or two miles south of Zayas Island?

A. Well, that would depend mainly upon the time of the tide; the weather; and other little fundamentals that might come in. I know from experience in crossing there that there were no two trips crossing there from Triple Island to Dall Island that I could steer the same course that I had steered the previous trip.

Q. Have you had any experience in going through Caamano Passage?

A. Yes, sir, when I was on the "Perry L. Smithers" and then I done some towing through there, and I have also done some fishing out around there many years ago.

(Testimony of William Charles Ansell.)

Q. To your knowledge is there a general set of the tide in that locality that I have mentioned?

A. The general set of the tide is to the westward.

Q. That is on an ebb tide?

A. That is on an ebb tide, yes.

Mr. Ryan: I object to that as highly suggestive and leading, and I move to strike out the answer.

The Court: The objection is overruled and the motion denied, in view of what he said before, and in view of the question before, Mr. Ryan.

Q. (By Mr. Bogle) Captain, from your experience are you able to tell us what the general set of the tide— [2789] that is, the general set of the current, I should say, is on an ebb tide at a point immediately west of Brown's Passage in Hecate Straits?

A. Well, the current, as a rule, runs up along the islands, and with a strong westerly tendency to shoot you to the left on account of the Skeena River coming out there, which is one of the largest rivers there is in the territory, and the passages being so narrow, that there is an awful force of that water pushing through there and naturally it tends to send you to the left.

Mr. Ryan: May I ask that that answer be read?

(Answer read)

Q. (By Mr. Bogle) What direction, magnetic, do you mean when you say, "to the left"?

A. Well, that would be west toward the south'ard.

(Testimony of William Charles Ansell.)

Q. Where is the Stikine River?

A. I did not say the Stikine River. I said the Skeena River.

Q. Yes; where is the Skeena River?

A. Well, Kennedy Island—it is just a little to the south'ard of Prince Rupert. Kennedy Island makes a sort of a delta there, and it comes out on both sides of Kennedy Island and pushes out through the delta towards Eddy Passage.

Q. Is that a large river?

A. That is one of the largest rivers in the territory.

Q. What is your actual experience about the set of the tidal current and the time of the commencement of the ebb tidal current and the flood tidal current as [2790] compared with the predictions obtained from the charts and the B.C. Pilot and the American Current Tables?

Mr. Ryan: I object to that until similarity of conditions are divulged similar to that that the "Denali" encountered—until that is first incorporated.

The Court: Objection overruled.

Mr. Ryan: Exception.

The Court: Exception allowed.

A. Well, they will vary anywhere from an hour to three hours against the predicted tides from the base from which we get our observations from, which are mainly forty or fifty miles away from Hecate Straits.

(Testimony of William Charles Ansell.)

Q. What do you mean by that?

A. Well, if we are taking Port Simpson or Prince Rupert or Ketchikan from the tide books, or Wrangel Narrows, they are many, many miles away from the actual place and there are lots of allowances that have got to be made.

Q. Is there any reference station at or near Caamano Passage?

A. There is no reference station at or near Caamano Passage, but there is a margin on the chart—there is a reference on the chart that will give you some data.

Q. Captain, in navigating the inland passages of Alaska, such as Caamano Passage, to what extent do you depend upon the compass?

A. The only thing that we depend upon the compass for is to give us a base course to start out with, and then when once we get started, why, then it is up to your [2791] local knowledge and the figures that you have made about what the tide is supposed to do, and then what she does do, which is probably an altogether different matter, and then we rely on the land and what we see as we go along.

Q. Well, after you have picked up a landfall to what extent do you rely upon dead reckoning?

A. Well, as I stated before, we put the ship on her base course and take the time that we start her off on that course, and we know the distance that we have got to run, and we will run along approximately for a little while until we figure that we

(Testimony of William Charles Ansell.)

should see this land. If we don't see it—well, we will either slow her down or stop her until we do see something.

Q. I am assuming that you have picked up the land, Captain. From that point forward to what extent do you rely on the compass or dead reckoning course?

A. Well, as I stated before we put her on her base course and then watch for developments. If the tide sets say one way, we will haul the ship the other way. The only thing to do in Alaska, with her narrow waters, is to keep her in the middle and off the beach.

Q. Having set your base course, have you had occasions where you found it necessary to haul to the right or to the left to make that course good—the mid-channel course?

A. There is hardly a time when you don't have to haul one way or the other.

Q. Is it customary in Alaska to note those changes in your log book? [2792]

A. Not on the average commercial vessel, no, sir.

Q. I mean on commercial vessels.

A. No, sir.

Q. During what portion of your career have you operated out of the Port of Seattle?

A. Practically all of my life since I landed here.

Q. Are you familiar with the custom in this port with reference to compass adjustments?

(Testimony of William Charles Ansell.)

A. I should say that I ought to be.

Q. What is that custom?

Mr. Ryan: Just a minute. I ask that he be—he has not asked him whether there is a custom or not.

Q. (By Mr. Bogle) Do you know of any custom in this port?

A. Not a laid down custom, no, sir.

Q. Do you know of any custom of adjusting or compensating compasses by a shore adjuster at any regular intervals?

A. Not unless they are applied for by the master.

Q. I say, do you know of any custom of doing that at regular intervals?

A. No, sir.

Q. Under what circumstances is that done—that is, is that compensation done by a shore adjuster?

Mr. Ryan: That is objected to.

The Court: If you know.

Mr. Ryan: The witness said that there was no custom.

Q. (By Mr. Bogle) If you know, Captain.

The Court: In view of that condition, he may answer.

A. The only custom, Your Honor, is this, that if a captain [2793] goes aboard his vessel and he finds his compasses are out of order, all that he has to do—now, this has been my experience—is to notify his office and tell them that he wants those compasses adjusted, and I have never been turned

(Testimony of William Charles Ansell.)

down, and I do not know of any other shipmaster yet that has been turned down on that object.

Q. Well, under what circumstances would you as an experienced shipmaster consider it necessary to request the compensation or adjustment of your compasses by a shore adjuster?

A. Well, on leaving the dock or moving around the harbor there to pick up my cargo, if I found that the compasses were sluggish, or that they had some big bubble in the compass, or they had been ashore for repairing, and had quite a large error on fixed points, well, I would figure that I would be justified to ask for some adjustment on that compass.

Q. Would you determine that in a loaded or a light ship?

A. Well, ordinarily on a light ship, because the minute that I get my cargo on board my ship the adjustments go all to pieces then.

Q. What do you mean by that?

A. Well, you bring on a lot of steel, or a lot of iron, and you adjust your compass today, and then you go down here to the can company and load on a load of cans, and then you go some place else where you add a lot of railroad iron, or you put on a couple of boilers or locomotives on her, your compasses all go haywire again.

Q. Captain, if the master of the "Denali" checked his [2794] compasses, either by taking cross bearings or by known headings of the dock,

(Testimony of William Charles Ansell.)

or by running a magnetic course on the following headings, West Northwest, Northeast by North $\frac{1}{2}$ North, East Northeast, West by North $\frac{1}{2}$ North, North Northwest, East by South, Southeast by East, West Southwest, South Southeast, and found no deviation or error as large as one degree on any one of those headings, would you as an experienced ship master deem it good seamanship or necessary to have that ship swung for compensation by a shore adjuster?

A. Well, if the master swung that ship on that many headings, he is practically taking a deviation card of his own, and has no deviation at all, and the compasses do not need any adjustment. They are all right.

Q. I don't want you to understand, Captain, by that question that I mean that he had swung the ship in the ordinary sense. I merely am saying that he checked it either while alongside the dock or by steering a magnetic course, or by taking cross bearings. Now would the result as stated be——

A. (Interposing) As long as he had no deviations, why, I do not see—as long as he had no deviations, why, there was no need of adjusting compasses.

Q. What would you say, Captain, from your experience as a shipmaster if the captain, after loading cargo and putting cargo on the well deck which had a certain amount of iron and steel, a cargo of magnetic tendencies, swung his ship on fourteen

(Testimony of William Charles Ansell.)

points from West Southwest to Northeast; took azimuths on each heading, and that from West [2795] Southwest to North he had practically zero, and in no case exceeded half a degree, and from North to Northeast the errors increased slightly to a maximum of two degrees on northeast—this was after the cargo was loaded—would you say that his compasses were in proper condition for the northbound voyage?

A. I would say that they were.

Mr. Bogle: That is all, Captain.

Cross-Examination

By Mr. Ryan:

Q. How many times have you been through Caamano Passage?

A. Well, I should say about twenty times.

Q. And on what ships?

A. On the "North Haven". Of course she has had three names. She was the "Eastern Gale"—that was her original name when she was bought from the Shipping Board, and then she was changed to the "Perry L. Smithers", and then she was changed to the "North Haven".

Q. What other ships?

A. And I was on the "Comet", which was a fishing boat that belonged to the San Juan Fishing Company, many years ago, and we fished out in that vicinity, and we used to dodge in and out of there right along. And then I was on the "Iroquois", a tug, this spring, and I towed a barge through

(Testimony of William Charles Ansell.)

there, and I think it was the 19th or the morning of the 20th of July this year that I came through with the USS "Louisville".

The Court: Did you come through there? [2796]

The Witness: Yes, sir.

The Court: Caamano Passage?

The Witness: Down through Caamano Passage from Ketchikan, bound for Astoria.

Q. (By Mr. Ryan) How many years ago was it that you last came through Caamano Passage on this ship that you called the "Perry L. Smithers", the "Eastern Gale" and the "North Haven"?

A. Well, in 1927.

Q. How many years has it been since you went through Caamano Passage on the "Comet"?

A. Oh, that was quite a lot previous to that.

Q. About what year?

A. Well, the way that I remember it, it was the year that we had the first Potlatch down here. I don't know just what year it was, or what date it was, but I know it was when we had the first Potlatch, when I came back through Caamano Passage on the "Comet".

Q. What was it, 1890?

A. No, no. That is since then. It was about 1914 or 1915; somewhere around in there.

Q. And then you were through there on this tug this last spring?

A. Yes, sir.

Q. Towing a barge through there?

(Testimony of William Charles Ansell.)

A. Yes, sir.

Q. On a hawser astern?

A. Yes, sir.

Q. How long was the hawser?

A. Oh, going through there we had around 300 to 400 feet. [2797]

Q. How much hawser did you have before you went through there?

A. Well, coming up Hecate Straits we had about a thousand feet.

Q. And then you went through there on the "Louisville"?

A. Yes, sir.

Q. These last two have been since the stranding occurred?

A. Yes, sir; they have been since the stranding occurred.

Q. Now, when you came on the "Louisville" you didn't come up through Caamano Passage at all, isn't that right?

A. That was not up at all. I came down through there.

Q. Certainly. You came down through there?

A. Yes, sir.

Q. In other words, you got a very definite fix on Tree Point Light and another light, didn't you?

A. Not so definite.

Q. Didn't you?

A. Not so definite.

Q. Didn't you get a definite cross bearing on

(Testimony of William Charles Ansell.)

Tree Point Light and another light before you came down through Caamano Passage to the southerly?

A. We had a fix on the north end of Zayas Island.

Q. Yes.

A. And with respect to Tree Point Light, it was a misty rainy night. The light was not fixed from there. It was fixed from the north end of Zayas Island.

Q. Well, it is a little safer coming down through Caamano Passage from the north than it is coming up from the south'ard, isn't it?

A. Well, of course, the major portions of the rocks that extend beyond the island extend towards the south'ard, but you still have a couple when coming up the north'ard there. [2798]

Q. (By Mr. Ryan) Yes; but coming down from the northward you have these aids to navigation? You have Tree Point Light right behind, don't you?

A. She isn't quite right behind.

Q. How far is Tree Point Light from this reef on which the "Denali" stranded, that dries at 12 feet?

A. It is about 16 miles. I wouldn't be exact.

Q. What is the visibility of that light, as to the height of eye, about 28 feet?

A. About 14 miles.

Q. You have never examined the chart to find out what the visibility of that light is?

(Testimony of William Charles Ansell.)

A. Oh, I have, lots of times, but we cannot carry all those lights in our head. You have a thousand and one lights between Seattle and Alaska.

Q. If the fact is that Tree Point Light is only 14½ miles from this reef, which dries at 12 feet, on which the "Denali" stranded, then the fact is that you, coming down from the northward, would have that light right back of you and in sight all the way down?

A. If you could see it, yes.

Q. Certainly. And that is a little different from the situation if you are going up from the southward, isn't it?

A. Oh, a little bit.

Q. Now, take this case of the "Louisville", that came down; you were on there merely as advisory to the navigating officer and the captain, were you not?

A. Yes.

Q. You were not in charge of a watch at all?

A. No; except while I was on the bridge they asked me what [2799] was the next course, etc., and so on, and I would tell them, and we would lay her on that course and away we would go.

Q. They were the ones navigating the ship; you were just advising them?

A. They were going by what I said.

Q. Isn't it a fact that all down through Caamano Passage a compass course was steered, and a record

(Testimony of William Charles Ansell.)

kept in the log book, in the case of the "Louisville"?

A. I couldn't tell you, sir. I had nothing to do with that whatsoever.

Q. In other words, you were not heading to the dead reckoning position of the ship, is that it?

A. They would ask me right along. I put her in the middle of that channel, and I kept her in the middle of that channel. I ordered the course to suit myself.

Q. You do not know what entries were made in the log book?

A. No, sir. That was not part of my business.

Q. You didn't have anything to do with what they did in keeping the dead reckoning position?

A. I know there was a dozen officers on that bridge, which we do not have on a merchant vessel, and what they are doing it is hard to keep track of.

Q. At least, you do not know that they did not keep an accurate compass record of every course the vessel steered, and of the length of time she was on that course all the way down through Camano Passage?

A. I know this much, that whenever I ordered a course——

Q. (Interposing) Answer the question; do not spar around.

A. I am not trying to spar around. [2800]

Q. I am afraid you do not understand the question. Read the question. (Last question read.)

(Testimony of William Charles Ansell.)

A. I couldn't say whether they kept an accurate one, or whether they kept one at all. I know that they took references and that they took bearings, and they did lots and lots of things when they were navigating the ship down there.

Q. And you would just point out a hill or landmark, or something like that, that you recognized, and tell them about it, isn't that right?

A. In one sense, yes, and in another sense, no. If they asked me—

Q. (Interposing) I thought you said it was a rainy night, and there were some other weather conditions—was it a dark night?

A. It was night, yes.

Q. And raining?

A. Raining.

Q. You came down through Caamano Passage?

A. Sure.

Q. What landmark did you point out to them on Zayas Island, coming down?

A. I pointed out the north end of the island, and then when we got down, squared away the south end of the island.

Q. Those are the two landmarks on Zayas Island, are they not?

A. Yes, sir.

Q. They took bearings on them, didn't they?

A. I presume they did.

Q. And recorded them?

A. I presume they did. [2801]

(Testimony of William Charles Ansell.)

Q. And at the same time they could get a cross bearing on Tree Point Light?

A. They may have been able to. I was looking dead ahead. I wasn't looking out back.

Q. You didn't pay any attention to Tree Point Light?

A. I had myself down the middle of the channel, and then all I had to do was keep in the middle of the channel and off the beach.

Q. You know very well, don't you, that if all you do is try to keep in mid-channel there you are going to hit this reef that the "Denali" stranded on?

A. Not necessarily, sir.

Q. But as you are going up from the southward, if all you are trying to do is keep in mid-channel you are almost certain to hit that reef, if you go up from anywhere to the southward of Zayas Island, or southward of the reef?

A. If you are too broad, you might, but if you are coming up on a regular course and have some sort of fix before you get there, you should not.

Q. That is right. You have to have a fix there so that you will be sure to give a berth to that reef, which dries at 12 feet, before you begin this mid-channel piloting up Caamano Passage, isn't that so?

A. You do not have to get a fix on the rock.

Q. You get a fix on the south end of Zayas Island?

(Testimony of William Charles Ansell.)

A. No, sir; you can get it from Dundas Island.

Q. All right; you are coming up from the south; you tell me the landmark that is on Dundas Island that you could get this fix on, on a dark night.

A. There is Lebo Island there. [2802]

Q. Prince Lebo Island, you are talking about?

A. Precisely. There is a thousand names for it; everybody has a name of his own.

Q. What landmark — the question was — well, read the question. (Question read as follows:

“Q. All right; you are coming up from the south; you tell me the landmark that is on Dundas Island that you could get this fix on, on a dark night.”)

A. That is not on Dundas Island. That is a small island just off of Dundas Island.

Q. Then answer the question.

A. It is answered.

Q. The question is, what landmark do you know of, which is a recognized landmark on Dundas Island, on which you could get a fix, as you call it, coming up from the southward, on a dark night.

A. Well, there is the hill of the island here. She has quite a big hill on Dundas that you can get some sort of a bearing on, if it is clear.

Q. It would have to be clear before it would be any good?

A. Certainly.

Q. This Prince Lebo Island is a flat, table top kind of an island, isn't it?

(Testimony of William Charles Ansell.)

A. Yes.

Q. Tell me how you would get a bearing on Prince Lebo Island?

A. That island is about 200 feet high.

Q. How long is it?

A. I really don't know the exact length of it. But if there [2803] are no shadows you will see probably the open water coming from Brown Passage, you will see the open water between it and Dundas Island, and naturally when you get up there you know you are there.

Q. What would you take a bearing of on a dark night, on Prince Lebo Island?

A. Any part of the island I could get.

Q. Well, you tell me the part.

A. Any part.

Q. That you took the bearing on?

A. Any part of it—the middle of the island.

Q. It is all flat all over the top; tell me what there is in the middle of the island that would be a distinguishing landmark that you could get an accurate bearing on.

A. Take the middle of the island—take the middle of it.

Q. You would have to see the whole island quite clearly in order to determine where the middle of the island was, in order to take this bearing in the dark, wouldn't you?

A. If you want to get down to seconds, and things like that, yes, but where you are going to

(Testimony of William Charles Ansell.)

pass a thing a mile off you do not have to be so accurate.

Q. Going up from the southward, how would you be going after you passed Triple Island Light, up through Caamano Passage; what would you be doing toward determining how the vessel was proceeding, say, over the ground?

A. The first thing I would have to know would be how far I was off Triple Island Light, how far out in Hecate Strait I was.

Q. Now, knowing that what would you do?

A. I would lay a compass course. [2804]

Q. What course?

A. A base course. I do not know. I haven't got the chart here to figure it out, and I cannot remember all those courses. I would have to remember a thousand and one courses, and I cannot do it.

Q. Can't you give approximately the course you would set on leaving this fix off Triple Island, to go up through Caamano Passage?

A. It would be about around West $\frac{3}{4}$ South, something like that.

Q. How far off Triple Island would you have this fix, going North through Hecate Strait and up Caamano Passage?

A. In the first place, coming out of there you have to——

Q. Wait a minute; the question calls for a definite answer. (Last question read.)

A. Now, where am I coming from?

(Testimony of William Charles Ansell.)

Q. From Seattle up through Hecate Strait.

A. That is, from the southward?

Q. How far would you leave Triple Island Light abeam?

A. About 12 miles.

Q. Take this position; what course would you be on arriving at Triple Island Light?

A. I cannot remember the course.

Q. Well, approximately.

A. I would not venture to approximate anything.

Q. Take this position, 12 miles off Triple Island Light, the ship lying abeam, what change of course would you make there to go up through Caamano Passage?

A. I don't know what course I would go up there. It is just a question whether I would change at Bonilla Island or [2805] where it is.

Q. What course would you set from this course off Triple Island up through Caamano Passage?

A. I would have to lay it out on the chart to find out.

Q. Can't you give us approximately the course?

A. I gave it to you once before.

Q. West $\frac{3}{4}$ South?

A. About.

Q. How long would you proceed on that course, West $\frac{3}{4}$ South, from the fix off Triple Island, to lead you up through Caamano Passage?

A. How long?

(Testimony of William Charles Ansell.)

Q. Yes.

A. That is hard to say.

Q. Would you stay on it all the way until you got through Caamano Passage, and way on clear to the northward?

A. I might only stay on that course half an hour, and then have to start hauling. The tides might start taking me out to the westward again and I would have to start to haul.

Q. Well, if it were a dark night you would not be able to tell whether it was necessary to haul one way or the other, would you, going from Triple Island up through Caamano Passage?

A. In a case like that——

Q. (Interposing) Would you? That calls for yes or no, and then you can explain.

A. Give it to me again, please. (Last question read.)

The question is, how dark the night was. As long as I could see something I could tell very quickly whether I was going to the left or going to the right. There is [2806] a string of islands running right along there that you can see, and lots and lots of times you do not have to get up to Dundas Island.

Q. I have asked you before about the landmarks, and you have given them.

A. Yes.

Q. After setting a course from a fix off Triple Island Light, to go up through Caamano Passage, it would be absolutely necessary for you, wouldn't

(Testimony of William Charles Ansell.)

it, to steer by compass until you could pick up one of these recognized landmarks that you have described and take a bearing on it, so you would know whether it was necessary or not to haul over, isn't that right?

A. I would have to steer by something, yes.

Q. Certainly; you would have to steer by compass until you could get in a position to take such a bearing, isn't that right?

A. Certainly. That is what the compass is for.

Q. If all you could see ahead of you on your bow was a kind of a blur of two islands, and you couldn't pick out any of those recognized landmarks, what would you do?

A. Stop it.

Q. You are a day time navigator, too.

A. Thank you; if you think so. I think I have had quite a lot of experience, if you want testimonials from anyone, as to what I have done during dark nights. I have traveled that country half of my life.

Q. At least the captain and the navigating officer of the "Louisville" were able to bring the ship down in rain and mist, through Caamano Passage, by using the compass, [2807] weren't they?

A. Yes; and I am telling you what the navigating officer told me; he said he wouldn't do that again.

Q. I do not care about individual comment. I am asking you if it is not a fact that they, steering

(Testimony of William Charles Ansell.)

by compass, had no trouble getting down through Caamano Passage.

A. Yes, sir; because I was there.

Q. And what you contributed was——

A. (Interposing) My local knowledge.

Q. Of the North end of Zayas Island?

A. My local knowledge.

Q. Your local knowledge consisted in knowing about the North end of Zayas Island?

A. Knowing it when I saw it.

Q. That is right.

A. In the middle of the night.

Q. And they did all the rest?

A. I don't know. The ship did all the rest.

Q. And got through safely on a rainy, dark night?

A. Sure.

Q. Any ship could get through there safely on a rainy and dark and hazy night if the compasses were in good condition, and if they steered an accurate course through there, like the "Louisville" did?

A. If they knew Zayas Island when they saw it, and knew Dundas Island when they saw it, yes.

Q. Now, on your direct examination you said that on the Inland Passage, or the Inside Passage, they did piloting. What did you mean by that statement?

A. Well, what does "piloting" mean? [2808]

(Testimony of William Charles Ansell.)

The Court: Well, you explain it. Counsel wants to know what you mean by using those words.

The Witness: Well, that is using your local knowledge over a country that you travel many, many, many times.

Q. On a dark night what does your local knowledge consist of, so far as being of any possible use to a navigator?

A. Knowing all the objects when you see them.

Q. Suppose that the night is so dark that sizeable, unlighted objects cannot be seen at a greater distance than two miles, and suppose the night is dark and hazy, and you were proceeding from a fix off Triple Island, say 10 or 11 or 12 miles off, to go up through Caamano Passage, what course would you set magnetic?

A. I would have to figure that out.

Q. What would you do under those circumstances?

A. As I stated before, I would lay out a base course, and if the distance is 12 miles to that certain point I would run 10.

Q. You would run by the course you laid down on the chart, wouldn't you?

A. Yes, sir. If it was two miles off—as long as I didn't get within two miles I would know darned well I would never hit it, so I would stop two miles short of there and then start to do some figuring.

Q. That is, you would lay down another course on the chart?

(Testimony of William Charles Ansell.)

A. If I could see something, yes, and if not I would probably stop until daylight and then proceed.

Q. You would not be able to lay down a course on the chart unless you had a compass in good condition so that you [2809] could know where, say, North magnetic was, isn't that so?

A. Well, after bringing a ship from Seattle—

Q. (Interposing) Answer the question, please, yes or no, and then you can explain, if you want to. Read the question. (Last question read.)

A. Yes. Now, can I explain that?

Q. Yes; go ahead.

A. After leaving Seattle, and I got that far, if I didn't know what my compasses were doing by that time there is something radically wrong with me. I have come about 350 to 400 miles, and made many, many changes in courses, and I have had plenty of time to check up my compasses. By the time I got there I should know what my compasses were doing.

Q. Suppose it just happens that all the courses you have been steering since you left Seattle were on approximately the same heading that your steamer had been laid up on for many months in a boneyard, then no azimuths that you took would give you any indication at all, would they, with respect to what the deviation was on a heading, when you suddenly swung, say, 30 degrees to the right; isn't that so?

A. No.

(Testimony of William Charles Ansell.)

Q. What?

A. That is providing I hadn't swung my ship.

Q. That is right. Now, if you took azimuths of bearing when the ship was lying alongside the dock, it is well known, is it not, among mariners, that such bearings are apt to be off, because they are affected by other steel vessels in the vicinity, and by iron on the docks, and the booms [2810] out, and that sort of thing?

A. They are liable to be off, yes.

Q. What amount of deviation on a compass do you regard as dangerous?

A. Anything; if I do not know it.

Q. All right. Now, if you do know it, what amount of deviation on a compass is dangerous?

A. None of it is dangerous, as long as I know it.

Q. I see; 95 degrees deviation wouldn't be dangerous, in your opinion, is that it?

A. As long as I knew it. What is the matter if I steer it north or south, as long as I know what the deviation on my compass is—but I never saw a compass with 95 degrees deviation, in my life.

Q. But there is some limit to your statement, then, isn't there? Is it your idea that if you have a bad compass, that simply because you know it is bad that that makes it good?

A. What do you call a bad compass?

Q. Well, one which has large deviations, or which is erratic on the same heading, or when you do not know what the deviations are at all on a

(Testimony of William Charles Ansell.)

large number of points or degrees. Don't those things make it a bad compass?

A. Not necessarily.

Q. You do not think those things make it a bad compass?

A. Not if I do not know it.

Q. Why not?

A. If I do not know it I do not have to adjust my compasses to find them. I swing my ship to find out, and then if I find a compass is "haywire", then I will ask for an [2811] adjustment.

Q. Why is an adjustment of compasses made, if you know, by compass adjusters?

A. To get them as near correct as possible.

Q. Exactly.

A. That is all.

Q. What the compass adjuster does is that he changes the correctors and the magnets, and the finders bars, and the horizontal balls——

A. Everything.

Q. And the various other things—and the binnacle, so that the deviations of the compass are removed, excepting, we will say, about half a degree, or a degree, isn't that so, ordinarily?

A. Ordinarily, if they can get it down to two degrees they think they have done a fair job.

Q. That is what a good compass adjuster does, isn't it?—Well, isn't that so?

A. That makes a fairly good compass out of it, yes.

(Testimony of William Charles Ansell.)

Q. If you have anything other than that you have a bad compass, but your idea is that because you know it is bad, and the extent to which it is bad, that that makes it good, is that it?

A. No, sir.

Q. Then I do not understand your testimony. Can you make any further explanation of that?

A. You are getting too technical for me.

Q. I was trying to be simple. Now, what does good and safe practice require with respect to a master, the navigating officers and watch officers, taking a ship on a voyage [2812] from Seattle up to Alaskan ports, so far as—well, say as far as charts are concerned?

A. Well, it is advisable to have, as near as possible, all of the charts that cover the territory you are traveling over.

The Court: I do not recall this phase of seaworthiness being gone into on direct examination; seaworthiness in any respect other than with regard to the compass. I do not recall any such direct examination.

Mr. Ryan: He was asked about what charts—

The Court: He was not asked anything about charts, as I recall the testimony of this witness.

The Witness: This is the first I have been asked, Your Honor.

Mr. Ryan: I do not want to go beyond the direct examination. All right.

(Testimony of William Charles Ansell.)

Q. (By Mr. Ryan) Now, what does good and safe practice require that an ordinarily prudent master, navigating officer, or the watch officers, that they take on a steamer sailing on a voyage from Seattle to Alaskan ports, Metlakatla in particular, among others, so far as tables are concerned?

Mr. Bogle: As far as what are concerned?

Mr. Ryan: Tide tables, and that sort of thing.

Mr. Bogle: I object to that, Your Honor, as not being proper cross examination. We did not cover any of that subject.

Mr. Ryan: They went into the tide tables.

The Court: You asked him something about the variation of the actual condition from that indicated by the Pacific [2813] Coast Pilot, or some other kind of Pilot.

Mr. Bogle: Yes; I did ask him that question, and that was incidentally mentioned.

The Court: If the cross examination of counsel indicates that he is leading to an inquiry on that subject, then the question will stand.

Mr. Ryan: I am, Your Honor.

The Witness: Now, what is that question, please?

(Question read as follows:

“Q. Now, what does good and safe practice require that an ordinarily prudent master, navigating officer, or the watch officers, that they take on a steamer sailing on a voyage from Seattle to Alaskan ports, Metlakatla in particular, among others, so far as tables are concerned?”)

(Testimony of William Charles Ansell.)

A. Well, it is natural for the ship to have her own library, which is bought and paid for by the company, which includes Coast Pilots, charts, tide tables, current tables, azimuth mirrors, and what have you—anything pertaining to the navigation of the ship.

Q. What Coast Pilots would an ordinarily prudent master and navigator take with him on a voyage to Alaska, from Seattle?

A. Going outside or inside?

Q. Going up through Hecate Straits and Caamano Passage, to Metlakatla?

A. Well, if he had the Pacific Coast Pilot from—well, No. 1 and No. 2, and if he also has the Canadian Coast Pilot, No. 1 and No. 2, and such other addenda that may issue, he would have, as far as Pilots—that is all [2814] he would need.

Q. You are referring to British Columbia Coast Pilot Volume No. 1 and Volume No. 2?

A. Yes.

Q. Issued by the Canadian Government?

A. Yes.

Q. And United States Coast Pilots, Volume 1 and Volume 2, issued by the United States Hydrographic Office of the Navy Department of the United States, isn't that so?

A. Those are the ones I am referring to.

Q. What other tables would *they* ordinarily prudent master have with him on such a voyage?

The Court: Relating to tidal currents?

(Testimony of William Charles Ansell.)

Mr. Ryan: Yes, Your Honor; relating to tides and currents.

The Witness: The American tide tables, current tables, and the Canadian.

Q. You mean by the current tables, the current tables of the Pacific Coast, North American and Philippine Islands, 1935, issued by the United States Department of Commerce, isn't that right?

A. The same thing.

Q. And the American Tide tables, you mean for the Pacific Coast of the United States, issued by the United States Government?

A. Yes.

Q. And the Canadian tables are issued by the Canadian Government for the Pacific Coast of the United States?

A. Yes, sir.

And you get them free. [2815]

Q. Now, the Coast Pilot refers to certain tide tables, refers to certain charts for further information with respect to tides and currents, and that is supplementary information?

A. They do.

Q. What are those? Would you take those charts along?

A. I told you before that I would take all the charts requisite, covering the territory.

Q. One of those charts would be Hydrographic Office Chart No. 2828, wouldn't it?

A. Possibly, yes.

(Testimony of William Charles Ansell.)

Q. I am not asking you about possibilities; I am asking you what an ordinarily prudent master would take with him on a voyage to Alaska, going from Seattle through Hecate Strait and Caamano Passage?

A. He would have that chart; yes.

Q. He would have to have that chart, if he were prudent.

A. He would get that data that you are referring to.

Q. If he didn't have that he would not have a supplement to the tide tables to that area, or currents at that place?

A. No.

The Court: Mr. Ryan, will you get right at what you want to get at on this subject of the currents and the tides?

Mr. Ryan: Yes; that is exactly it, Your Honor.

The Court: Get at it and ask him what you want to know about that subject.

Q. (By Mr. Ryan) Do not those documents that you have described constitute the best available information that [2816] an ordinarily prudent master would have with respect to tides and currents, etc., up through Hecate Strait and Caamano Passage and Dixon's Extrace?

A. It is the best that you can get, but they are not correct in lots of places.

Q. And you would use them, wouldn't you?

(Testimony of William Charles Ansell.)

A. I would use them up to the point where I found out they were wrong.

Q. Can you point out specifically wherein any of those books are wrong, insofar as Dixon's Extrace, etc., are concerned?

A. Not the whole of Dixon's Extrace, but I can other places in the tide tables; I can show you where they are wrong.

Q. Let us limit it to Dixon's Entrance, or Caamano Passage, Chatham Strait, or Hecate Strait; tell me any place in any of those places where what is said by the Government is wrong.

A. I would have to be there at the time to prove it, whether it is right or wrong. I have to take the assumption that the book is right until I get there.

Q. Was anything found wrong with these charts or tide tables, or other supplementary information referred to, when the "Louisville" was there, being navigated down through there?

A. Several times, several things. [2817]

Q. Now one. That is Lord Rock, for one. How about that?

A. The light was not functioning according to what the book says. There were several places along the line that were the same way. Different things like that happened.

Q. That was Lord Rock, was it?

A. It was a light, but it was not functioning according to the way that it was in the book.

(Testimony of William Charles Ansell.)

Q. That Lord Rock is up in Chatham Strait, or the main passage to the Eastward of Dundas Island, is it not?

A. Yes. If you keep going you run right into it pretty near.

Q. It is on the inside passage to Alaska from Seattle, is it not?

A. It is in Dixon's Entrance, yes.

Q. All right. Now, you tell me any specific thing that you ever found wrong that is stated in the tide tables of the United States Government, or the Canadian Government, or the current tables of the United States Government, or in the current information given by the Canadian Government, or in this supplementary tide and current table on Chart 2828 supplementing the tide tables and current tables?

A. Well, I have not the book with me, and I cannot exactly remember the day or the date, but I have seen the difference in Seymour Narrows as much as thirty minutes between the Canadian tables and the American tables.

Q. And is there anywhere else where you found such a discrepancy?

A. Well, you go up through Granville Channel and Seymour Narrows, and you will see on the chart that it says that [2818] the tides meet here.

Q. And then what about the difference if there is a wind?

(Testimony of William Charles Ansell.)

A. And if there is some sort of a wind or there has been a wind you meet the tide five miles down the line or five miles up the line.

Q. Now, Granville Channel and Seymour Narrows are both on the inside passage, aren't they?

A. Yes, sir.

Q. So in the absence of definite knowledge that you had unusually strong winds preceding the time that you were interested in, or that you have had unusually high tide or tides beyond those predicted in the tide tables, conditions would be normal and as shown in the tide tables and on the Chart 2828, isn't that so?

A. Oh, well, they are never accurate.

Q. It would be inappreciable in the absence of those things that I have stated.

A. Well, they are never accurate. I never found them accurate to the minute.

Q. Well, within a minute or two or three, say.

A. Well, that means a whole lot sometimes.

Q. Now, when does the tidal stream turn between Dundas Island and Cape Fox with relation to, say, the time of high water at Prince Rupert?

A. I would have to figure that out.

Q. You don't know, do you?

A. Not right offhand, no.

Q. If I gave you a pad could you figure it out?

A. I would have to get some books.

Q. What books *would have* to use? [2819]

(Testimony of William Charles Ansell.)

A. I would have to use the tide tables, and so forth.

Q. You would just dig it out of the current and tide tables, is that it?

A. And I would have to consider the time that I got there and the weather. In fact, I have got to be right there at the spot to figure it out, whether she is right or whether she is wrong.

Q. All right. Now, when is there slack water—that is, when does the ebb begin at a point, say, five miles south true from Prince Lebo Island, say, taking the time of one hour after high water at Port Simpson?

A. I would have to figure that out in the same way.

Q. Where would you figure that out from?

A. Probably from Prince Rupert or Wrangel Narrows—some of the bases that are around there.

Q. You would either take the tide table or Chart 2828?

A. Yes, sir.

Q. Or the current tables?

A. Or the current tables, yes, sir.

Q. And you would figure that out?

A. Yes, sir.

Q. And that is what you would rely on?

A. No, I would not say that I would rely on that. It would give me a base to work from.

Q. And the only thing that would make you

(Testimony of William Charles Ansell.)

change from that base would be the conditions that you have described before?

A. Yes, sir.

Q. That is, the weather and the wind?

A. Weather conditions, and what stage of the tide it was, [2820] and how high the tide was at Prince Rupert, and how high the Skeena River was, whether there had been any freshets or anything like that around there.

Q. Now, take this tide. If the tide were a little higher than that predicted, that would merely increase the force of the current. It would not change the direction of it, would it?

A. Well, it depends on which tide it is, ebb or flood or what.

Q. Well, either one. If nothing happens excepting that the tide is higher than it was first predicted, there would be no change excepting in the force of the current, isn't that so?

A. You would have that much more force.

Q. But the direction would be the same, wouldn't it?

A. Oh, not necessarily.

Q. Why not? If nothing happens except that the height of the tide is increased.

A. Well, providing that the current is running normal and is running as it was predicted, but it does not always do that.

Q. And the tidal currents do run normal and as predicted excepting when these unusual conditions

(Testimony of William Charles Ansell.)

of weather and unusual heights of tide occur; isn't that so? Everybody knows that, isn't that right?

A. Not according to the chart. The tides on the Pacific Coast here have changed materially in the last two years, and there is no mention of it on the chart here.

Q. Well, you know that this current diagram on Chart 2828 is referred to in the tide and current tables as a [2821] supplement of them, is it not?

A. And it tells you that this is the position—the maximum that it should go, but it doesn't say that they do so. It just gives you an idea from their observations, and their observations, some of them have been taken twenty-five years ago. There have been no observations made up in that country for many years.

Q. Now, don't go outside of the record. Those charts show on there themselves that they are taken from the very latest available data, don't they?

A. Yes, sir.

Q. Of the United States Government, and the Canadian Government and the British Admiralty, do they not?

A. That is what it says there, but it is not so.

Q. Doesn't it say so on that chart?

A. Yes. It says it has been corrected and taken from the latest data had, but it doesn't say when the data was taken.

Q. Well, if you have the latest up to date charts, you have the latest up to date information that any

(Testimony of William Charles Ansell.)

of the governments which have regular hydrographers and all that sort of thing are able to give, isn't that so?

A. Yes, that they are able to give, but if there are no surveys made there how are you going to get it?

Q. Have you ever reported to any government or to any hydrographer any differences that you ever found in the tidal currents in Caamano Passage or in that vicinity?

A. No, sir, I have not.

Mr. Ryan: That is all. [2822]

Redirect Examination

By Mr. Bogle:

Q. Captain, do you know the date on Chart 2828?

A. No, sir, I don't know the date. I would not—

Q. Do you know whether or not any American Surveys are made of Canadian waters?

Mr. Ryan: Just a minute. I object to that.

Mr. Summers: That is not proper redirect examination and, further, it is not the best evidence.

Mr. Bogle: They brought this out on cross, Your Honor.

Mr. Ryan: No, we did not. The Court shut me off on the charts, and I didn't pursue that any further except the tiny part that related to the supplemental tide table.

(Testimony of William Charles Ansell.)

The Court: The diagram on Chart 2828 was gone into as being a part of the addenda of the tide tables.

Mr. Ryan: Yes, the part at the bottom, but we didn't ask him any question with respect to whether that was a necessary chart to be used and to be kept on ships.

The Court: Well, it was gone into in connection with supplying charts on ships and as a part of the addenda of the tide tables. Now, if the question is directed to that, the witness may answer.

Mr. Bogle: That is what it is directed to.

The Court: Read the question.

Q. (By Mr. Bogle) Do you know that, Captain?

Mr. Ryan: Just a minute. I understood him to answer no to that question that was asked him.

The Witness: I have not answered yet. I don't know [2823] what the question is yet. You have been talking among yourselves, and I haven't got the drift of the question yet.

The Court: Read the question.

(Question read as follows:

“Do you know whether or not any American surveys are made of Canadian waters?”)

Mr. Summers: I renew my objection on the ground that this would not be the best evidence.

The Court: The objection is overruled.

Mr. Summers: Exception.

The Court: Exception allowed.

(Testimony of William Charles Ansell.)

A. I don't know of any American vessels doing any survey work in Canadian waters. There used to be a couple of British boats out here many years ago that did that, the "Icarus" and the "Algeria", part of the British Navy, that did that.

The Court: That is sufficient. The answer is sufficient.

Q. (By Mr. Bogle) How many years ago?

Mr. Ryan: That is objected to. I mean, that this man obviously has no knowledge concerning that. Let me ask you, did you see these boats?

The Witness: Yes, sir.

Mr. Ryan: Which boat did you see?

The Witness: Both of them.

Mr. Ryan: He has not connected it up with the Canadian Government. I object to him testifying on speculative matters like this. That is not the best evidence. [2824]

The Court: Objection overruled.

Mr. Ryan: Exception.

The Court: Exception allowed.

Q. (By Mr. Bogle) How many years ago, Captain?

A. They were out here when I first came out in 1896, '97, '98 and '99.

Q. Captain, in considering the data contained in the various books referred to by Mr. Ryan, I will ask you if you had in mind and you took into consideration this statement on page 363 of the United States Coast Pilot, Part I—

(Testimony of William Charles Ansell.)

Mr. Ryan: (Interposing) Now, if the Court please, I object to that being read in this way by counsel, first, on the ground that it is leading, and, second, on the ground that it is not proper redirect. This man was asked on direct about tide tables and that sort of thing. If they wanted to go into that they should have gone into it on direct. All I did was to cross examine him on that subject that they went into, and that was all.

The Court: Objection overruled.

Mr. Ryan: Exception.

The Court: Exception allowed.

Q. (By Mr. Bogle) This statement on page 363 of the United States Coast Pilot No. 1, "In navigating coasts where the tidal range is considerable special caution is necessary. It should be remembered that there are indrafts into all bays and bights, although the general set of the current is parallel to the shore. The turn of the tidal current offshore is seldom coincident with [2825] the time of high and low water on the shore". And this further statement, "Current arrows on charts show only the usual or mean direction of a tidal stream or current. It must not be assumed that the direction of the current will not vary from that indicated by the arrow. In the same manner the velocity of the current constantly varies with circumstances, and the rate given on the chart is a mean value, corresponding to an average range of tide. At some stations but few observations have been made". Do

(Testimony of William Charles Ansell.)

you take that into consideration in considering the accuracy of this data?

A. That, and also what is in the British Columbia Pilot. They have practically the same thing. I think you will find it on pages 7 and 8 and then down here on page 202 and 264. I have studied that thing pretty thoroughly during my time running up and down that country.

Q. Captain, what was your capacity on the "Louisville"?

A. As a commercial pilot.

Q. Were you paid for your services?

A. Sure.

Q. Were there good navigators on that ship?

A. They were splendid; the best in the world.

Q. And with reference to inland waters, such as Caamano Passage, to what extent did you advise them as to the course?

A. Just to put her in the middle, and I said, "There she is, gentlemen", and then they brought her down through there, or I did. I stood up there until we got down towards the south end of the island. They got a little [2826] nervous and I said, "We will haul her to the left a little, and I know that we are pretty well clear now", and away we came.

Q. One question, Captain, that you answered on cross with reference to the steel and iron and magnetic cargo on various docks at Seattle. Do you

(Testimony of William Charles Ansell.)

know whether there is any such cargo or any such structure on the Arden Salt Dock?

Mr. Summers: Just wait a minute.

A. No, sir, I do not.

Mr. Summers: As of what date?

Q. (By Mr. Bogle) Or at the other docks in the City of Seattle, on May 13, 14 and 15, 1935?

A. No, sir. I wasn't around the docks, and I cannot tell you whether there is anything on them of that character or not.

Q. Now, in circumstances where you have a ship swung, or the master considers it necessary to swing the ship for compass compensation by a shore adjuster, do you have that done when the ship is loaded or light?

Mr. Ryan: We object to that on the ground that it is not redirect examination. He went into this fully on direct, and I merely crossed him on that.

The Court: Objection overruled.

A. Well, invariably we adjust the compass when they are light—when the ship is light, I should say.

Mr. Bogle: That is all, Captain. [2827]

Recross Examination

By Mr. Ryan:

Q. What allowance was made for current in setting the "Louisville's" course down through Caamano Passage, if you know?

A. I was on a pretty big ship, and a fast ship, and——

(Testimony of William Charles Ansell.)

Q. (Interposing) The question just calls for an answer as to what allowance was made for current.

The Court: That is right.

Q. (By Mr. Ryan) If you know.

A. I don't remember.

Q. Do you know what allowance you made for current on any occasion that you went through Caamano Passage, and the name of the ship?

A. The only allowance that I made was—I cannot say what the name of the ship or the names of the ships were that I have gone through there with where I have had to haul one way or the other, and how much that was. It is years ago in some instances that I have gone through there.

Q. I see.

A. And then I have sometimes gone through with a tow and the current will get hold of your tow and set her down, and naturally you have got to keep going and pull it to the right or left to keep her from bumping some object.

Q. Assuming that Pilot Obert has testified in this case that based on his judgment as an Alaskan experienced pilot of twenty-nine years experience he made an allowance of three-eighths of a point for current going up through Caamano Passage, would you say that that was a [2828] prudent and safe allowance, or not?

A. Not being there, and not knowing the position that he was in when he started out—if he only made one degree change, it might have been enough. There are lots of tides running up in these waters

(Testimony of William Charles Ansell.)

where we make a couple of degrees change, and he took three-eighths of a point and, of course, as I say, if I had been there and I had seen the circumstances—If it had been me I might have hauled her off two points and put her ashore on Dundas Island. But the thing is that you have got to be there. That is where your local knowledge comes in. You have got to be there, right on the ground, to see these things before you act and so that you can act intelligently.

Q. Suppose the sea is calm and everything is apparently normal, and the ship had a fix ten and a half miles distant abeam from Triple Island Light, and then she sets a course North $\frac{3}{4}$ West Magnetic—

A. (Interposing) Yes.

Q. (Continuing) —by standard compass, so that three-eighths of a point will be allowed for set of the current in Caamano Passage, would you say that the navigator who did that was careless or not?

A. No, he was not.

Mr. Bogle: Just a minute. I object to that, if Your Honor please, as not being proper recross, and there was nothing on redirect that called for that question.

The Court: The objection is overruled. More particularly so, because of the witness' answer just made. [2829]

Mr. Ryan: That is all.

Mr. Bogle: That is all, Captain.

(Witness excused)

(Testimony of Michael M. Jensen.)

Mr. Bogle: I will call Captain Jensen. Take the stand, Captain.

MICHAEL M. JENSEN,

called as a witness on behalf of the petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. Bogle:

Q. What is your name?

A. Michael M. Jensen.

Q. You will have to speak up.

The Court: Is it J-e-n-s-e-n?

The Witness: Yes, sir.

Q. (By Mr. Bogle) You will have to speak up quite clearly, Captain.

A. Yes, sir.

Q. Where do you reside, Captain?

A. Seattle.

Q. What is your business?

A. Master mariner.

Q. What licenses do you hold, Captain?

A. An unlimited master's for any ocean; pilot for Southeastern and Southwestern Alaska, and Puget Sound, and all ports and places along the Pacific Coast.

Q. How long have you been seafaring, Captain?

[2830]

A. Oh, I started to go to sea about 1890.

(Testimony of Michael M. Jensen.)

Q. How long have you held a master's license?

A. Since about 1906 or '07.

Q. And how long have you held a pilot's license for Southeastern and Southwestern Alaska?

A. Not very long.

The Court: Could you give us any idea, Captain, of the time?

The Witness: About two years.

Q. (By Mr. Bogle) Have you had any experience—what has been the extent of your experience in Alaska waters?

The Court: As a navigating officer?

Mr. Bogle: Yes. Thank you, Your Honor.

Q. (By Mr. Bogle) Yes, as a navigating officer in Alaskan waters.

A. As a navigating officer?

Q. Yes.

A. As an officer and master about seventeen years—sixteen or seventeen years.

Q. Have you had any offshore experience, Captain?

A. Some.

Q. With what company?

A. The American Mail Line.

Q. On what run?

A. On the Seattle-Oriental run—China, Japan and Manila and India.

Q. With what companies have you been connected in navigating ships as an officer in Alaskan waters?

(Testimony of Michael M. Jensen.)

A. The Admiral Line, and previous to that the Alaska Coast [2831] Company, and the Pacific Steam Whaling Company, which was later absorbed and called the Admiral Line. It was all merged into one company.

Q. You have never been employed by the Alaska Steamship Company?

A. No, sir.

Q. And how long since has it been that you have been a master in Alaskan waters?

A. Last year.

Q. And what has been the nature of your piloting, Captain? What type of vessels have you been on as pilot—that is, in Alaskan waters?

A. On merchant vessels and some navy ships and navy vessels; cruisers and destroyers.

Q. That was in Southeastern and Southwestern Alaska?

A. Yes, sir.

Q. Both?

A. Yes, sir. On the Navy vessels only in Southeastern Alaska.

Q. Now, Captain, what has been your experience navigating the waters of Dixon's Entrance and Hecate Straits and the vicinity of Caamano Passage?

A. Well, you mean the length of my experience and the number of times?

Q. Yes; the general extent of your experience in navigating those waters.

(Testimony of Michael M. Jensen.)

A. Well, as I said before, I have been operating and running to Alaska as a master and pilot—as master and pilot approximately thirteen or fourteen years, and the other experience was as first officer and second officer. [2832]

Q. But, Captain, I am trying to get that limited to the experience that you have had in these particular waters of Hecate Straits and Caamano Passage and Dixon's Entrance. How many—what portion of those years have you navigated through those particular waters?

A. Well, going across Dixon's Entrance—crossing Dixon's Entrance to go to Ketchikan, why, I made a round trip every two weeks or so.

Q. And how often have you been up through Hecate Straits and Caamano Passage?

A. Well, I don't know. It is quite a number of years ago. I should say ten or twelve or fifteen times.

Q. Did you ever have any fishing experience in those waters?

A. No, sir.

Q. Captain, do you feel that you are able from your experience to state what the set of the tide is—the tidal current is in Hecate Straits west of Dundas Island and south of Zayas Island?

A. No, I cannot say anything with accuracy.

The Court: Well, counsel wanted to know if you were able to make any statement which would be of any value or which would be material here on that question.

(Testimony of Michael M. Jensen.)

Q. (By Mr. Bogle) From your own experience.

A. Well, in my own experience, running back and forth there, I found that most of the time the current is setting in a westerly direction—that is, from west to southwest, and maybe south of that. It does not run in a straight direction.

Q. Is that the direction of the set on an ebb tide? [2833]

A. Yes, sir.

Mr. Ryan: I object to that as leading, Your Honor.

Mr. Bogle: No, it is not.

Mr. Ryan: He has done this every time.

Mr. Bogle: No, I have not.

The Court: Objection overruled. In this connection, in the Court's view, it is permissible.

Mr. Bogle: I am just trying to expedite this.

The Court: Objection overruled.

Mr. Ryan: Exception.

The Court: Exception allowed.

Q. (By Mr. Bogle) What is the direction on an ebb tide?

A. The direction on an ebb tide is westerly—southwest to west and from south to southwest, and from a little north to west. It varies.

Q. Captain, in the vicinity of the waters westerly of Brown's Passage, what is the set of the tide on an ebb tidal current?

A. Approximately westerly—from west to southwest, as I said before.

(Testimony of Michael M. Jensen.)

Q. How does the strength and the direction and the time of the currents in that vicinity coincide with the predictions on the chart and in the Coast Pilots?

Mr. Ryan: Just a minute. I object to that unless the witness *is* shown that he has made some observation there. Unless he shows that he has made some observation there I will object to it.

Mr. Bogle: I didn't quite finish my question, Mr. Ryan. [2834]

Q. (By Mr. Bogle) If you know.

Mr. Ryan: Well, that is objected to on the grounds that the words "If you know" do not add anything. The witness has not been shown to have made any observations there that would qualify him to give an answer to that question.

The Court: Objection overruled.

Mr. Ryan: Exception.

The Court: Exception allowed.

A. Well, I found that the velocity, as well as the direction, varies very greatly in the different places along in a distance there of ten or fifteen miles.

Q. Have you been through this passage at night?

Mr. Ryan: Just a minute. Will you please read that answer, Mr. Reporter?

(Answer read)

Q. (By Mr. Bogle) What do you mean by that distance, Captain? What territory does that cover?

A. Well, that would cover part of the territory from Triple Island to Dundas Island, and off towards Caamano Passage.

(Testimony of Michael M. Jensen.)

Q. Have you ever been through Caamano Passage at night?

A. Yes, sir.

Q. What would you say as to the conditions of visibility at night along the Dundas shore—along the shore of Dundas Island?

A. Well, it depends on the night. If the night is overcast and cloudy, why, it would be rather dark. But if it is clear, why, the visibility is rather good during the night except, you might say, towards morning. Before [2835] sunrise, maybe an hour or an hour and a half or two hours it is quite often, especially in the spring and summer time—quite often there is a haze hanging along the beach, and it is rather hard to get any bearings of anything, or any proper fix of anything.

Q. Well, Captain, in navigating these Alaskan waters and the narrow passages, or passages such as Caamano Passage, to what extent do you depend upon your compasses or dead reckoning courses?

A. Well, you depend very little on the compasses after you pick up a known headland.

Q. After you pick up a known headland how do you use that in your navigation?

A. Well, if necessary we will haul the ship either one way or the other—if she is too close to one shore we will haul her away from it, and if too close to the other shore, we will haul it the other way.

(Testimony of Michael M. Jensen.)

Q. Is it customary in Alaskan waters to put those changes that you have made to rectify your course in your log books?

A. No; no.

Q. Captain, are you familiar with the method, or custom, if any, with reference to compass adjusting in Seattle?

The Court: Reserve that answer until after the short recess that we are about to take. We will take a ten minute recess.

(Recess)

Mr. Bogle: Will you read that question?

(Question read) [2836]

Mr. Ryan: I object to that.

A. There is not any custom——

Mr. Ryan: (Interposing) What did you say?

A. There is not any custom, as far as I know.

Q. (By Mr. Bogle) Do you know of any steamship company, operating passenger or freight vessels, in the Port of Seattle, or operating out of the Port of Seattle that have their compasses adjusted at any regular or fixed time?

A. No, sir.

Q. What is the practice with reference to compass adjusting?

Mr. Ryan: I object to that. He just said that there was not any practice.

Mr. Bogle: He said that there was no custom.

A. The practice is——

Mr. Ryan: (Interposing) Just a minute.

(Testimony of Michael M. Jensen.)

The Court: Objection overruled.

Mr. Ryan: Exception.

The Court: Exception allowed.

A. The practice is that if in the master's opinion it is necessary to have the compasses adjusted he will require that to be done.

Q. Captain, in your experience as a shipmaster, under what circumstances would you request compensation of compasses or the adjustment of your compasses by a shore adjuster?

A. If the compass appeared sluggish, or appeared to be out of repair—for instance, if there was a bubble in it, or something like that, I would request to have it repaired and have it adjusted at the same time. Or if [2837] there had been any extensive alteration made to the ship, in the case of repair work around the pilot house, with excessive steel or iron, and so on, why, I would request to have the compass adjusted before the ship went to sea.

Q. Assuming that the master of the "Denali" checked his compasses either by running magnetic courses, or by taking cross bearings, or checking his headings when he was alongside of the dock—the heading of which was known—and made a check on the following headings, West Northwest, Northeast by North $\frac{1}{2}$ North, East Northeast, West by North $\frac{1}{2}$ North, North Northwest, East by South, East Northeast, Southeast by East, West Southwest and South Southeast, and found no error of as much

(Testimony of Michael M. Jensen.)

as one degree on any one of those headings, in your judgment should he as a shipmaster have requested his ship to be swung, and his compasses adjusted or compensated by a shore adjuster?

A. No, sir.

Q. Now, Captain, assuming that this ship, when completely loaded, had a cargo on her well deck forward, consisting in part of boilers, road scrapers, tractors, gas engines, and possibly other cargo of magnetic qualities, in your experience would you anticipate that that cargo would have any effect upon your compasses?

A. Well, it very likely would.

Q. As a practical matter how would you determine whether *not* not such character of cargo did or did not affect your compasses?

A. Why. I would take the ship's heading in her loading [2838] berth before she started to load, and watch the heading of the compass during the process of loading. And when the loading was finished I would give her the final check. If no material change was there I would consider that the cargo had made very little difference, if any, to the compasses. And then when she got out of her loading berth, out in the bay or harbor, or whatever you might call it, why, I would try to get bearings on the different headings, either by azimuths or by known points on shore.

Q. Could you by that method determine the amount of effect which the cargo would have on the compasses?

(Testimony of Michael M. Jensen.)

A. Yes, sir.

Q. Well, assuming by the use of that method you could determine the errors, if any, in a standard compass, then how would you determine the error, if any, in your steering compass?

A. By comparison.

Q. By comparing them in what way?

A. Comparing the steering compass with the standard compass.

Q. On what heading?

A. On all the headings where they are taking bearings.

Q. Captain, with a magnetic cargo such as I have described, would you expect it to have the same effect on both compasses?

A. No, sir.

Q. Upon what compass would you expect it to have the most effect?

A. On the steering or wheel house compass.

[2839]

Q. Why?

A. Because it would be closer to any cargo that might be loaded on the ship.

Q. Captain, assuming that the master and the second officer of the "Denali", after loading this deck cargo, while in the vicinity of West Point swung the ship over fourteen points, from West Southwest to Northeast, and that on the headings from West Southwest to North the errors were practically zero—in other words, there was nothing

(Testimony of Michael M. Jensen.)

to exceed half a degree—and that from North to Northeast there was a slight error with a maximum of two degrees on Northeast, would you consider that the compasses of that ship were in proper condition for the voyage from Puget Sound to Metakatla, Southeastern and Southwestern Alaska—a north bound voyage?

A. Yes, sir. I would consider them in very good shape.

Q. Captain, if you knew the amount of your deviations, what extent of deviation in your judgment would be dangerous?

A. If the deviation is known, well, I don't know that any extent would be dangerous.

Q. From your experience in the Alaska trade what is the most magnetic cargo that you handle? What cargo has the most effect upon your compasses?

A. A load of salmon in tins, or a load of coal oil in tins, or gasoline in tins, in my experience has affected the compass more than anything else.

Q. Now, is that north bound or south bound cargo?

A. The salmon is south bound. [2840]

Q. And when you load such cargo, how do you determine the effect of that cargo upon your compasses?

A. By observation; by azimuths, and so on.

Q. In your experience what is an average deviation caused by a cargo of canned salmon? Not one

(Testimony of Michael M. Jensen.)

of excessive deviation, but the average deviation that you will get?

A. Oh, that varies considerably, due to the fact that in some cases the cargo of salmon is further away from the standard compass in some ships than what it would be in others.

The Court: Give us some limit——

Mr. Bogle: (Interposing) Yes.

The Court: (Continuing) ——of variation.

Mr. Bogle: Yes.

The Court: If you can.

A. I should say that it varies from, say, four or five degrees up to seven or eight, or maybe nine degrees; maybe more in some cases.

Q. (By Mr. Bogle) And if you know that deviation is your navigation south bound dangerous?

A. No.

Q. Are there any facilities in Alaska—are there in Alaska any aids for compensating the compass?

A. No, not that I know of.

Q. I mean, changing the magnets to compensate them?

A. No.

Q. Captain, referring back for a minute, you said that you had some experience piloting naval vessels, didn't you?

A. Yes, sir. In the last couple of years I have had experience with several of them. [2841]

Q. What is your position aboard the naval vessel when you are piloting that vessel?

(Testimony of Michael M. Jensen.)

A. Well, I am there as a pilot.

Q. And what authority do you have, or what duties do you have?

A. My duty is to pilot the ship through narrow waters.

Q. Well, they have navigating officers aboard, don't they?

A. Yes, and they have more than one as a rule. They have a whole flock of them on some of them.

Q. Captain, in navigating the narrow passages, such as Caamano Passage, in Alaska, who directs the course and change of course that the vessel should take in going through those waters?

A. The pilot.

The Court: You are speaking with reference to naval vessels?

Mr. Bogle: Yes, with reference to naval vessels.

Q. (By Mr. Bogle) The pilot, you say?

A. Yes, sir. But I have never been through Caamano Passage with a naval vessel, but in any other passage like it, why,—

Mr. Ryan: (Interposing) I move to strike out the answer.

The Court: The Court will take that explanation made by him as part of the answer. Motion denied.

Mr. Ryan: Exception.

The Court: Exception allowed.

Q. (By Mr. Bogle) Captain, have you had experience with naval vessels where you had to navigate them through waters without any charts at all? [2842]

(Testimony of Michael M. Jensen.)

A. Yes, sir.

Q. And when you have no charts, of what use are your compasses?

A. They are of no use.

Q. Just tell us what that experience was on a naval vessel.

A. How is that?

Q. Just tell us what experience you had of that kind on a naval vessel.

Mr. Summers: We object to that as immaterial, and irrelative. Ask him something specific.

Mr. Bogle: Well, this is specific. This is something that you wanted, and this is specific.

The Court: I think it ought to be sustained.

Mr. Bogle: I think that is all.

Cross Examination.

By Mr. Ryan:

Q. Do you regard a passage that is two and a half miles wide as a narrow channel?

A. Yes, sir.

Q. What is the designation of a narrow channel under the rules of the road?

A. Well, anywhere from 100 feet up to two or three miles.

Q. Do you think that a passage two miles wide is a narrow channel under the rules of the road?

A. Yes, sir.

Q. Are you familiar with the rule of the road that requires you to stay to the starboard side of a narrow channel?

(Testimony of Michael M. Jensen.)

A. Yes; to the right side. [2843]

Q. To the right hand side?

A. Yes, sir.

Q. And you think that that applies where the channel is two miles wide?

A. I do.

Q. If I suggest to you that 600 feet is the designation of a narrow channel, you are much surprised, is that it?

A. Well, we have rules here on Puget Sound that are not in the rules of the road, that all ships going down the Sound keep to the right or star-board side of the channel and the other ones coming up the Sound keep to the other side of the channel to eliminate chances of collision.

Q. But Puget Sound is not a narrow channel, is it, Captain?

A. No, it is not a narrow channel. That is what I mean to specify, that although Puget Sound is not a narrow channel, still——

Q. (Interposing) But the term “narrow channel”——

Mr. Bogle: Wait a minute. He has not finished his answer.

The Court: Finish your answer.

A. But still we hold to the rules to keep to the right.

Q. (By Mr. Ryan) Is not the ordinary designation of a narrow channel among mariners a channel that is 600 feet wide?

(Testimony of Michael M. Jensen.)

A. Not necessarily.

Q. What is the designation, if you know?

A. As I said before, anywheres from 100 feet to two or three miles.

Q. You do not know of any rule that says that, do you? [2844]

A. No, I do not.

Q. Now, how many times have you been through Caamano Passage?

A. Oh, I don't know; ten or twelve times I should say; maybe a little more and maybe a little less.

Q. Give me the names of the ships that you were on going through Caamano Passage.

A. Well, there will be many of them.

Q. What?

A. I might have been on a different ship each time that I went through.

Q. Now, I am not asking you to guess or speculate, Captain. If you don't know, just say that you don't know.

The Court: The question is to recall such names as you are able to recall.

A. Well, I have been on the Steamer "Bertha".

Q. You have been on the Steamer "Bertha"?

A. No, not on the "Bertha", but on the "Jeanie".

Mr. Bogle: That is spelled "J-e-a-n-i-e".

Q. (By Mr. Ryan) On the "Jeanie"?

(Testimony of Michael M. Jensen.)

A. Yes, sir. I should say that I was on her three or four times. Then I have been on the "Admiral Sampson"; and on the "Admiral Evans"; and on the "Admiral Watson", and maybe others.

Q. When were you last through there before May, 1935?

A. Oh, around about 1920.

Q. On a flood tide what is the set of the tidal current in the—well, at a point five miles true south of Prince Lebo Island?

A. I don't know. [2845]

Q. What is it on an ebb tide at that place, say, one hour after high water?

A. The set of the current?

Q. Yes.

A. Oh, that varies.

Q. Well, what is it at that place one hour after high water?

A. I don't know.

Q. On an ebb tide?

A. I don't know. It varies anywhere from one knot to four or five.

Q. Well, don't speculate. If you don't know what it is, say so.

A. I don't know.

Q. You don't know?

A. I don't know because it varies.

Q. All right. Now at a point nine miles west southwest true from Triple Island Light, what is

(Testimony of Michael M. Jensen.)

the direction and force—that is, the set and drift of the current?

A. I don't know.

Q. Say one hour after high water?

A. I don't know. It varies. [2846]

Q. (By Mr. Ryan) What is it at any stage of the tide? Give me any stage of the tide.

A. I don't know.

Q. You don't know?

A. No; it depends on the tide.

Q. What?

A. It depends on the tide; and it depends on conditions, local or otherwise.

Q. At a point three miles true from Zayas Island what is the set and drift of the tidal current on, say, one hour after high water at Port Simpson?

A. Westerly.

Q. One hour after high water?

A. Yes.

Q. All right. On the flood tide, at a point three miles west true from Zayas Island, one hour after high water, what is the set and drift on that current?

A. It might be still the same as before; it might still be westerly.

Q. Have you been in that spot?

A. Not exactly—I cannot say whether I have been in that exact spot or not.

Q. Have you ever been in that spot, nine miles south of west true from Triple Island?

(Testimony of Michael M. Jensen.)

A. Not exactly, that I can say.

Q. Have you ever been in that spot five miles south true from Prince Lebo Island?

A. I cannot say I was in that exact place.

Q. What is the second drift of the tidal current at the southern entrance of Hudson Bay Passage, on the ebb tide? [2847]

A. I don't know.

Q. What is it on the flood tide?

A. I do not know.

Q. What is the set and drift of the tidal current in Brown Passage, at a flood tide, an ordinary spring tide?

A. I do not know.

Q. Do you know what it is on an ordinary spring ebb tide?

A. No, sir.

Q. When does the tidal stream turn between Dundas Island and Cape Fox, with relation to the time of high water at Prince Rupert?

A. I do not know that, either, but——

Q. When does the tidal stream turn, between Rose Spit and Overfalls Shallows——

Mr. Bogle: (Interposing) He was trying to finish his answer, Mr. Ryan.

Q. Have you any further answer that you want to make?

A. I do not know. It varies.

Q. Had you finished your answer to the last question with reference to the tide of high water on shore, or at Prince Rupert?

(Testimony of Michael M. Jensen.)

A. I do not know. It may not turn at all.

Q. You do not know what it is, do you?

A. No, sir. The tidal current might be evident if the water is still rising.

Q. I did not ask you about the rising of it, Captain; I asked you about when the tidal stream turned—do you understand that?

A. Yes, but I am trying to explain that I do not know, and the reason why I do not know.

[2848]

Q. Where would you go to get information with reference to that?

A. Well, the information in regard to tidal currents, ocean currents and coastal currents, on the Pacific Coast, especially in Alaska, is very meager.

Q. Would you go to the current tables for the Pacific Coast for the year 1935, issued by the Department of Commerce, if you wanted to find what they were in May, 1935?

A. I might; yes.

Q. You would go there, wouldn't you, Captain?

A. Not necessarily.

Q. You mean that you would not even open the book?

A. Not for the set of the current, I wouldn't go to the tide tables.

Q. I didn't ask you anything about the tide tables. You are familiar with the current tables of the Pacific Coast?

A. Oh, yes.

(Testimony of Michael M. Jensen.)

Q. That is what I am asking you about.

A. Yes.

Q. You mean you would not pay any attention, as a licensed master, to the Pacific Coast tables issued by the Department of Commerce?

A. The current tables issued for that particular locality?

Q. Certainly. Don't you know that?

A. No; because there were none when I was up there.

Q. Oh, I see. You were up there before 1920, is that right?

A. Yes.

Q. And this was issued in 1935, in January?

A. Yes.

Q. I will ask you about the flood tide off Hudson Bay Passage; [2849] you said you didn't know—I understood you to say on direct examination you knew what it was on ebb tide, is that right?

A. No; I did not.

Q. You do not know what the tidal current is, or the direction of the set of the tidal current off Hudson Bay Passage, is that right?

A. No; I do not.

Q. And you do not know what it is in Brown Passage?

A. I do not know the velocity. Are you referring to the ebb or the flood?

Q. I am referring to one hour after high water.

A. The set in Brown Passage?

(Testimony of Michael M. Jensen.)

Q. Yes; just off Brown Passage.

A. It should be westerly.

Q. How much?—What force?

A. I do not know.

Q. What is it on the flood tide?

A. It might not be any—it might be the opposite direction.

Q. Do you know what it is?

A. It might be in the opposite direction. The flood should set in the opposite direction.

Q. Is it eastward, is that right?

A. Yes, sir; or thereabouts. It might vary three or four points.

Q. Do you know what the direction of the set and drift of the tidal current is in Caamano Passage itself, between Dundas Island and Zayas Island? Do you know that or not?

A. No; I do not. It varies.

Q. What amount of deviation on a compass is, in your opinion, [2850] dangerous or safe navigation on a voyage from Seattle to Alaska?

A. If the deviation is known I would not consider any deviation dangerous.

Q. If you do not know what amount of deviation is dangerous on a compass on a voyage from Seattle to Alaska,—

A. (Interposing) If I do not know the deviation?

Q. Yes.

A. Any deviation is dangerous.

Q. What are the advantages of a compensated

(Testimony of Michael M. Jensen.)

or adjusted compass over one which is not adjusted or compensated, if you know?

A. Well, a compass always is adjusted and compensated before a ship goes to sea. It might be ten years previous to that particular time, or it might be——

Q. (Interposing) Do you understand the question; I am asking you a specific question. What are the advantages of an adjusted or compensated compass over an uncompensated or unadjusted compass? Now, can you state what they are, if you know?

A. Well, the advantages—well, I will not answer that question because I am not a compass adjuster.

Q. Are the charts of any use if your compass is not in good condition so as to show you the correct magnetic course?

A. Is the chart of any use if your compass is not correct?—Is that the question?

Q. That is it.

A. Yes; I suppose they are, to a certain extent.

Q. Will you tell me how? If you do not know what direction North is, how can you use a chart?

[2851]

A. Well, I could use a chart whether I know the direction of North or not. I cannot navigate it, but I can lay a course on a chart.

Q. You would not know whether your ship was on that course or some other course, would you?

A. No, of course I wouldn't, but I would have to lay the course down first, wouldn't I?

(Testimony of Michael M. Jensen.)

Q. Can you tell me how you would lay down a course, a magnetic course, on any chart, without knowing where North is, or where any other direction is?

A. I would lay the course on the chart.

Q. How would you lay it down if you didn't know what direction it was?

A. I do not lay that by the compass; I lay it on the chart and then compare the compass to it.

Q. That is exactly it. If your compass doesn't show the correct deviation you couldn't transfer it unto a compass course, what you had laid on the chart, could you?

A. If I know the error of it, I could.

Q. Yes; but if you do not know it?

A. No.

Q. If the compass was unreliable your chart wouldn't be any good to you, would it?

A. Why wouldn't the chart be good?

Q. You would not be able to set any course.

A. I would not condemn the chart because the compass is out.

Q. I am not condemning the chart; I am simply saying that I would like to have you tell me whether you think it possible for anybody, with an unreliable compass, to set a magnetic course, and make it good, which is shown on a chart? [2852]

A. No. Now you are getting to the question.

Q. That is all right; your answer is no.

A. I had it correct before.

Mr. Ryan: That is all, Your Honor.

(Testimony of Michael M. Jensen.)

Redirect Examination

By Mr. Bogle:

Q. Captain, if you see your landmark, which you, as a pilot, are familiar with, can you navigate then without a compass?

A. Yes, sir.

Mr. Ryan: I object to that. I do not think that is proper redirect examination, and also it is leading.

Mr. Bogle: That is all, Captain.

The Court: The answer will stand, then, if that is all. You may be excused from the stand, Captain.

(Witness excused.)

JOSEPH RAMSAUER,

called as a witness on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Bogle:

Q. Will you state your name, please?

A. Joseph Ramsauer.

Q. Where do you reside?

A. Seattle.

Q. What is your business?

A. Master Mariner.

Q. How long have you been going to sea? [2853]

A. Since 1900.

Q. What licenses do you hold?

(Testimony of Joseph Ramsauer.)

A. Unlimited ocean, any tonnage; pilot's license for Puget Sound and all of Alaska.

Q. How long have you held a master's license?

A. From 1920.

Q. How long have you held a pilots license for all of Alaska?

A. About the same time.

Q. Captain, how long have you been navigating the Southeastern and Southwestern Alaska waters as an officer?

A. Since 1916.

Q. And with what companies or company have you been connected?

A. The Alaska Steamship Company.

Q. During that entire time?

A. Excepting one trip or two.

Q. Have you had any experience in the waters of Dixon's Entrance, Hecate Strait and Caamano Passage?

A. Yes; I have been through there several times.

Q. Just tell us briefly the extent of your experience in navigating a vessel through those waters?

A. I have been through there as an officer, navigating officer, as pilot, and as master.

Q. On what type of vessels?

A. On all types.

Q. Freighters?

A. Freighters, passenger ships, big and little.

The Court: Over what period of years?

(Testimony of Joseph Ramsauer.)

The Witness: Since 1916.

Q. (By Mr. Bogle) From that navigating experience are you familiar with the set of the tidal currents in the vicinity [2854] of Caamano Passage, say at a point from a mile to two miles south of Zayas Island?

A. I do not know the strength.

Q. I mean the set.

A. As a rule; South, Southwest and West.

Q. What tide is that?

A. That is the ebb tide.

Q. How does the flood current set?

A. It is very uncertain about the flood.

Q. From your experience, what have you to say as to which of the two tidal currents is the stronger in that vicinity?

A. The ebb tide.

Q. From your experience, Captain, how closely does the beginning of the tidal currents and the strength of the tidal currents coincide with the predictions on the chart of that vicinity, chart No. 2828?

A. I do not know.

Q. Do they approximate or are they contradictable, in other words?

A. They give you an idea, but just how strong and what direction, that is up to you to find out when you get there.

Q. Have you been through those waters at night?

